Burlington Northern Santa Fe Corridor Analysis

Prepared for the City of Wichita

CITY OF WICHITA

by
Baughman Company, P.A.

BAUGHMAN COMPANY, P.A.

with assistance by

Metropolitan Area Planning Department

Public Works Department

Wichita Water and Sewer Department

Wichita Park and Recreation Department

Sedgwick County GIS Department

January 16,2002

TABLE OF CONTENTS

LIST OF FIGURES

LIST OF FIGURES

INTRODUCTION

Purpose of Study

In anticipation of the abandonment of the approximate 11.75-mile Burlington Northern Santa Fe (BNSF) - Wichita to Augusta line in the near future, the City of Wichita has authorized the study of this corridor in an attempt to evaluate the potential benefits of acquiring this right-of-way for public use.

This report will provide information on the background of the corridor, its existing infrastructure and condition, and analyze the line's ability to serve as one or more of the following: a utility corridor, a recreational trail and a passenger rail line.

Although apparent in light of this corridor's pending abandonment, it should be noted that this analysis eliminates the feasibility of continuing freight service over this rail line. According to BNSF officials, shipping of freight over this line discontinued over 5 years ago and the prospects of renewed use are not likely. Substantial infrastructure repair costs, lack of committed customers along the line and the continued decline of rail service in general would all indicated that this corridor will not sustain further use as a freight railroad.

Project Background

The City of Wichita issued a Request for Proposals on November 17, 2000 soliciting the services of a Consultant to analyze the subject rail line's suitability for railbanking. The study was authorized by the City Council on July 24, 2001 with a submission date for the report set for January 16, 2002. This study is funded by the City of Wichita.

Process of Developing Study

This report represents a comprehensive analysis of the Burlington Northern Santa Fe rail corridor, consisting of information obtained from site inspections, information from Burlington Northern Santa Fe officials, City and County staff, as well as independent research conducted by the consultant.

This study was prepared with the cooperation of the Burlington Northern Santa Fe Railroad. Transportation planning consultant Willard Stockwell and railroad consultant William A. Frederick prepared the report's section on rail passenger service, in addition to providing substantial insight into railroad operations. Special thanks to railroad historian Tom Rose for his assistance with the project.

BACKGROUND

Location of Rail Corridor

The Burlington Northern Santa Fe railroad line under consideration in this study extends from its terminus within the rail yards and its terminus near the Old Town district located west of I-135, east through Wichita and Sedgwick County to the Butler County line.

The subject corridor has two points of origin – south of 13th Street North at the intersection with Washington Street, and north of 2nd Street North at the intersection with Mosley Street. Both lines merge near Blaine Street and Washington Street, after which it proceeds east to Grove, arcs to the northeast to a point near the intersection of 17th Street North and Oliver Street before continuing east to the Butler County Line (see Figure 1.1). The north spur leading to 13th Street North is approximately 0.75 miles in length, while the southern spur leading to 2nd Street North is approximately 0.5 miles in length. The main east-west line totals 10.5 miles in length. Figures 2.1 through 2.6 detail the corridor from an aerial perspective.

This line was built across southeastern Kansas between 1879 and 1880 and served as a substantial physical landmark to which development adapted over the past century in and around Wichita. The right-of-way measures 100 feet in width along its 11.75 miles and intersects with multiple streets throughout east Wichita and Sedgwick County.

Considering its age and length, the corridor abuts a mix of land uses, ranging from heavy industrial uses such as the McAfee Manufacturing plant and the Cornejo concrete batch plant to a wide range of residential uses. The land use pattern of the areas adjacent to the railroad corridor is predominately single-family residential with parcels of industrial uses, commercial uses and undeveloped land scattered along the line (see Figures 3.1 through 3.6). Likewise, the majority of the adjacent property is a mix of "LC" Limited Commercial and "LI" Limited Industrial zoning to the west of I-135, while property along the line to the east is a mix of residential, office, commercial and industrial.

Historical Background

Providing Wichita with its second railroad, the St. Louis & San Francisco Railway Company, better known as the *Frisco*, extended its line from Oswego, Kansas in 1879 following the approval of a bond issue by Sedgwick County voters. The line was built through Labette County (Oswego, Altamont and Mound Valley), Montgomery County (Cherry Vale), Wilson County (Brooks, Neodesha, Fredonia and New Albany), Elk County, Greenwood County (Fall River, Piedmont and Severy), Butler County (Beaumont, Keighley, Leon, Cave Springs, Haverhill, Augusta, Lorena, and Andover) and Sedgwick County (Wichita Junction) by 1880.

The *Frisco* operated in Missouri, Oklahoma, Kansas, Texas, Arkansas, Tennessee, Mississippi, Alabama, and Florida. Headquartered in St. Louis, the *Frisco* served a wide area, with terminals in St. Louis, Kansas Missouri, Dallas, Memphis, Birmingham, Mobile, and Pensacola (Fla.). The "X-shaped" system maintained a primary junction at Springfield, Missouri. At its peak in the 1930s, the railroad operated on over 5,000 miles of track.

Begun in Missouri as branch of Pacific Railroad in 1853, the *Frisco* has gone through many corporate changes since reaching Wichita. This road fell into receivership in 1893, emerging in 1896 as the new St. Louis and San Francisco Railroad Company. This firm likewise failed, in 1913, being reorganized in 1916 as the St. Louis-San Francisco Railway Company. This corporate identification was retained, despite further financial difficulties, until the Burlington Northern absorbed it on November 21, 1980. The Burlington Northern Santa Fe Corporation was created on September 22, 1995, when BN bought AT&SF's corporate parent. Atchison, Topeka & Santa Fe Railway merged into Burlington Northern Railroad on December 31, 1996, and former BN was renamed the Burlington Northern & Santa Fe Railway.

Physical Structures

The rail line consists of approximately 62,000 feet of 90 lb. track atop approximately 37,000 ties that are considered to be in fair condition, all supported by a substantial amount of ballast. There is one bridge spanning the drainage canal underneath I-135 highway and Four Mile Creek, together with 17 box culverts and 12 drainage pipes along the corridor.

City of Wichita has 21 water lines within the corridor, including a recently installed a 42-inch main located along 3.5 miles of the northern edge of the railroad right-of-way from Webb Road to Shocker Street. Likewise, there are 19 City of Wichita sanitary sewer lines within the right-of-way, with an 8-inch sanitary sewer force main currently under construction between Womer Street (to the east of K-96) and Webb Road (see Figures 4.1 through 4.6).

Regarding the physical integrity of the infrastructure, the City of Wichita would need to consult with a structural engineer to examine all major improvements, such as bridges and culverts, for structural weaknesses. However, over the course of researching this project, it has been assumed that those improvements are sound. In the event weaknesses are discovered, the recommendations for the rehabilitation and renovation of the structures would need to be made and considered in the valuation of the corridor at the time a transfer of the line is negotiated with Burlington Northern Santa Fe Railway.

The BNSF track crosses 13 arterials and 14 other collectors and local streets over its entire length from Old Town to the Butler County Line. Daily motorists using these 27 streets make 173,724 crossings. Most of the crossings are on the busy arterials such as Rock Road with 29,469 vehicles per day and Woodlawn with another 21,732 vehicles per day. Only the K-96 Freeway is separated over the tracks with its 16,035 daily vehicles (March 2000 Traffic Counts).

Identification of Linkages with Other Public Uses

One of the fundamental aspects in creating a value to acquiring the railroad right-of-way is its ability to provide important linkages with multiple uses. Extending east through the City, the subject BNSF railroad corridor is within close proximity to several parks and recreational facilities, public institutions, as well as employment and shopping centers (see Figure 1.2).

There are nine public parks and two pathways located within one-half mile of the corridor. From west to east, these facilities are:

- McAdams Park, a 57.5-acre community park located north of 13th Street North and west of I-135 highway.
- I-135 Bike Path located from 17th street North and I-135 Highway to I-135 Highway and Stratford Street.
- Murdock Park, a 9.9-acre neighborhood park located south of 9th Street North and east of I-135 highway.
- Spruce Park, a 0.8-acre playground located at 12th Street North and Spruce Street.
- Sleepy Hollow Park, a 7.6-acre neighborhood park located north of Central and west of Vassar Street.
- MacDonald Park, a 148.6-acre special use park south of 13th Street North and east of Roosevelt Street.
- Fairmont Park, a 19-acre community park located north of 15th Street North and west of Gentry Street.
- Claude Lambe Park, an 11.4-acre neighborhood park south of 13th Street North and east of Oliver Street.
- Redbud Park, a 7.3-acre neighborhood park located south of 21st Street North and east of Edgemoor Street.

- Eastview Park, a 20-acre community park located north of 13th Street North and east of Governeour Street.
- K-96 Bike Path located from 127th Street East and K-96 Highway to K-96 Highway and Oliver Street.

Although not currently funded in the C.I.P., the Wichita-Sedgwick County Parks and Open Space Master Plan: Parks and Pathways depicts a potential park in the vicinity of 13th Street North and 143rd Street East. The plan also shows potential pathways running through the area to further connect park facilities.

In addition to the linkages with the City's public park facilities, the rail corridor is within one-half mile of several significant employment bases and shopping centers. Located from west to east, these uses are:

- Via-Christi-St. Francis medical complex located north of Murdock Street and east of Topeka Street.
- KU Medical Center and County Health Agency.
- Wesley Medical Center complex located north of Central Avenue and east of Hillside Avenue.
- The Wichita State University campus located north of 17th Street North, between Hillside Avenue and Oliver Street.
- Brittany Center retail and office complex located south of 21st Street North and east of Woodlawn Avenue.
- Coleman Middle School located north of 13th Street North and east of Governeour Street.
- Bradley Fair retail and office complex located south of 21st Street North and east of Rock Road.

Obviously, this corridor intersects with numerous streets that would provide unlimited access to many other locations and uses. Also, the Wichita Bicycle Map illustrates the various bike routes that are part of the overall bicycle path network and located within close proximity of the rail corridor.

Identification of Environmental Concerns

Railroad corridors are typically regarded as containing hidden environmental hazards of varying degrees due to the age and nature of its operations. It can be assumed that fuel and oil from trains, herbicides used to control vegetation, and even the materials being hauled over the rail beds have been sporadically deposited along the line. Likewise, the western portion of the subject corridor is located within an old, heavily industrialized area of the city and could contain contaminants from railroad operations, nearby industrial uses or both.

Although site inspections revealed no apparent environmental concerns, it may be prudent to retain the services of an environmental engineer to conduct an environmental assessment of the property prior to its acquisition. The nature of the assessment will depend on the property and the potential for contamination, but should include at a minimum the equivalent of a Phase I assessment. A Phase I environmental assessment combines research into the property's history with a visual inspection.

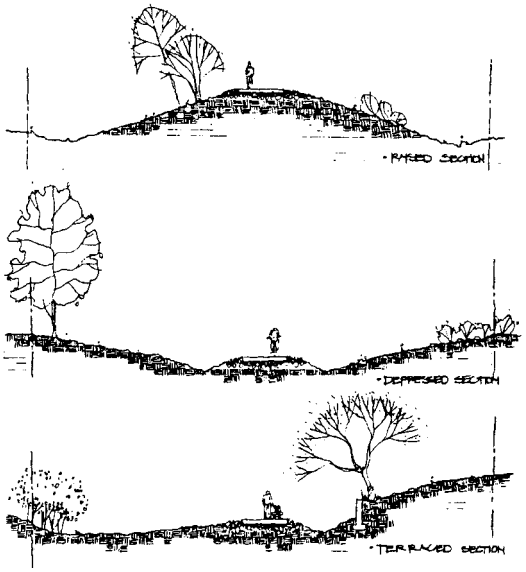
In the event a Phase I assessment of the property indicates that serious contamination may have occurred, a Phase II assessment could be warranted. A Phase II assessment involves more thorough testing of water, air, and soil samples, as well as a more thorough investigation of the site. If contamination is found, a Phase III assessment will provide the remediation plan for cleaning up the problem.

The assessment and its results may become a critical issue in the negotiations with BNSF to acquire the property.

Description **of** Natural Features

The rail line extends through both urban and suburban areas and over several different types of terrain. The vertical grade ranges from both raised sections to those below grade.

Although the rail bed maintains an at-grade to moderately elevated position along the majority of the line, there are sections throughout the corridor where the grade separation is relatively severe with steep side slopes. The illustration to the right depicts the various grades found along the BNSF corridor.



In addition, the corridor shifts from a heavily industrialized area west of I-135 Highway to a more open, suburban setting to the east.

Several streams intersect with the rail line to create interest and the majority of the corridor is lined with trees, which creates separation from adjoining properties.

Also, the existence of wildlife is more apparent within the eastern-most sections of the corridor.

Compatibility with the Comprehensive Plan

The acquisition of the BNSF rail line is in conformance with many of the City's adopted plans and policies, most notably in regard to the redevelopment of the right-of-way as a recreational trail.

With the objective of improving the quality of life in Wichita, planning efforts dating back to the early 1970's sought to expand the network of bicycle facilities. The acquisition of the subject rail line as a recreational trail is a long-standing goal of the community, in part as a way of connecting park facilities together and enhancing their accessibility.

In the 1989 *Comprehensive Bicycle Plan for the Wichita Metropolitan Area,* this rail corridor was one of several identified as a future bike path, proposing the development of 7.0 miles of the corridor (from I-135 to K-96) as a path at an estimated cost of $529,000. In both the 1993 Wichita-Sedgwick County Comprehensive Plan: *Preparing for Change* and the 1999 update to the plan, it is the expressed goal of the City of Wichita and Sedgwick County to continue to acquire and develop corridors, such as the Burlington Northern Santa Fe corridor, in order to expand their existing network of pathways. The Wichita-Sedgwick County Parks and Open Space Master Plan: *Parks and Pathways* identifies the corridor as an important part of the overall system of paths, and discusses the benefits such an acquisition would have on meeting the needs of the community.

The potential use of the right-of-way as a utility corridor also promotes the general objective of the Comprehensive Plan to take advantage of opportunities to better provide public services, such as water, sanitary sewer and storm water drainage. Although not specifically addressed in the Plan, the use of this corridor has, and may again in the future, provide a highly efficient means of extending utilities through east Wichita.

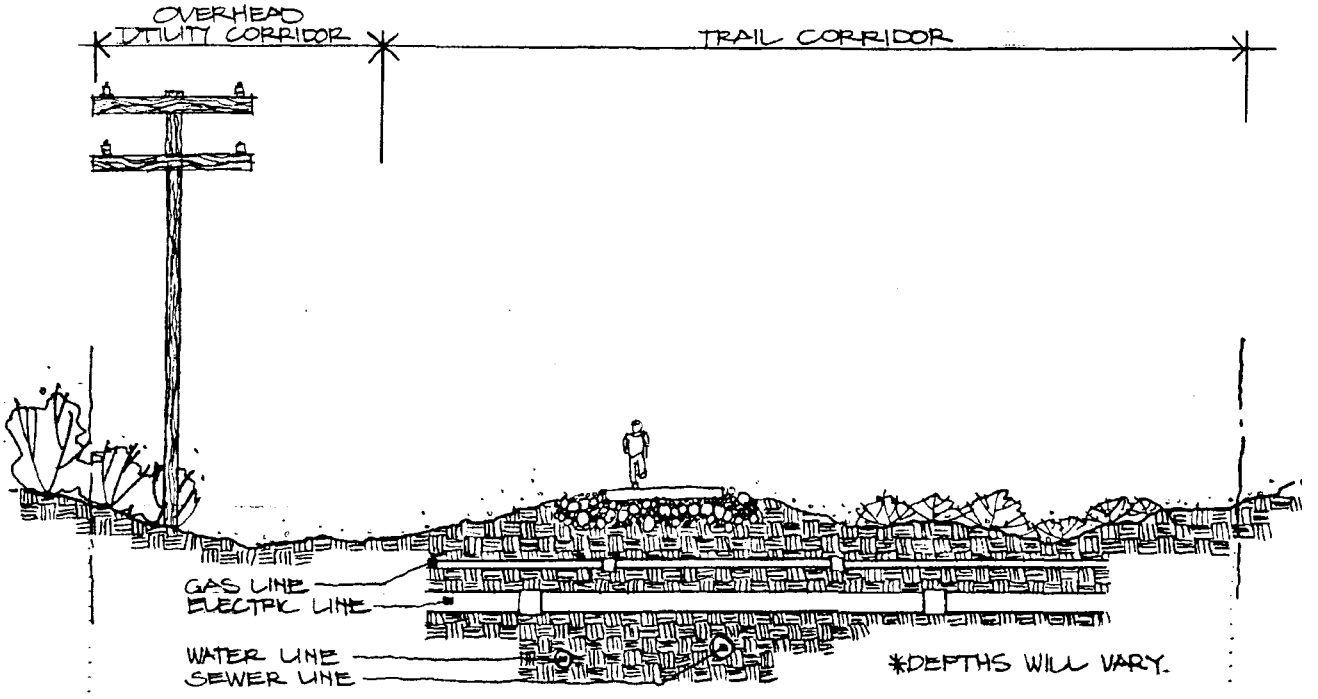
Although regarded in this analysis as having limited function in the near future, the acquisition of the BNSF line for passenger rail service would be in keeping with the Plan's goal of establishing passenger rail connections to Wichita. It should be noted that the foundation of railbanking, which is discussed as one method of obtaining the corridor, is to encourage the acquisition and maintenance of railroad right-of-way with the understanding that the corridor may be reused for rail service at some point in the future. In the event the City of Wichita intends to acquire the right-of-way, a corridor would be preserved until such time as rail transportation becomes feasible.

INTERIM USE BENEFITS

The scope of this report is to analyze the suitability of three interim uses for this right-of-way – as a utility corridor, as a recreational trail and for short-line passenger rail service - in the event the BNSF line is intended for acquisition by the City. Following is a discussion of these uses and the feasibility of each.

Utility Corridor

The ability of railroad right-of-way to serve as utility corridors is one of several reasons to acquire abandoned rail lines. Utilities, especially those that can be installed underground, such as water, sewer, natural gas, and buried electric or fiber optic lines, can be installed without interfering with the potential use of the corridor for alternative uses. In addition, above ground utilities, such as telephone, cable television, and overhead electric lines may also be located within these corridors. The illustration below shows a typical cross section of a railroad corridor with regard to utilities.



Study of Benefits

By using these areas for the purpose of providing or upgrading public utilities, railroad right-of-way can provide a greater community benefit. Discussed below are several ways in which these corridors can be put to use.

Acquiring the right-of-way for utility purposes can have the benefit of providing utility companies with an uninterrupted, easily accessible, stretch of land that is relatively free from disturbance. In addition, these various departments and companies benefit from having to work with only one managing agency to install their service rather than acquiring a similar length of property through negotiating with of hundreds of individual property owners.

Railroad companies have historically been willing to sell the right to place utilities, both public and private, within their right-of-way, and possessing a continuous corridor can be extremely valuable. It may be the best, if not the only, passageway that a utility can use for its facilities, and as the managing agency, the City could stand to gain considerable compensation for licensing the corridor.

If the railroad had a contract for underground utilities and retains the ownership of the corridor's sub-surface rights, it remains bound to the agreement with the utility. If the contract expires when ownership of the corridor changes hands, however, the utility may renegotiate its contract with the new owner to avoid disruption of the facilities. If the contract binds the owner of the corridor (whether or not it is the railroad), the new owner would be bound to the contract with the utility. However, Burlington Northern Santa Fe officials have stated that there are no underground utilities in this corridor with the exception of the City's infrastructure.

While permitting the installation of utilities within railroad right-of-way may have some economic benefits, there may be concerns raised over the safety of the corridor in the event it is also developed as a recreational trail. There are no proven health effects associated with fiber optic cables, underground electric lines, telephone lines, sewer, and water pipes; there are minimal safety risks associated with gas lines. The concern over the possible health risks connected with exposure to electromagnetic fields (EMFs) are perhaps the most apparent, but the few studies relating to short-term exposure, like that experienced when using trails with overhead power lines, show no evidence of health risks associated with EMFs.

Existing Conditions

As a future utility corridor for public and private utilities, this right-of-way offers a very suitable route for major east-west utility trunk lines. Trunk lines (whether for water, sewer, cable, etc.) are similar to the major arterial roads within our city in that they transport the bulk of the system's capacity, with smaller service lines branching off to serve customers.

Presently, there are several utilities that make use of or directly abut this corridor at various locations. The City of Wichita has installed a major water distribution line (42- to 48-inch lines.) along this route, extending from Webb Road to Shocker Street. The City is also in the process of installing a sanitary sewer force main from Womer Street to Webb Road and has plans in the works for extending it further east. Another readily apparent utility is the KG&E high KV line running along the north side of the tracks beginning at Oliver and extending east to the county line.

If the rail right-of-way is retained as a utility corridor, some type of access roadway should be constructed along or on top of the embankment. Gates or chains prohibiting unauthorized vehicle intrusion would need to be installed at each road intersection. Some degree of mowing or weed control would also be necessary with this type of corridor.

Drainage

Drainage along, and across, this route is a significant issue. Historically, most railroad embankments acted as a levee, channeling storm water via parallel ditches to pipes or boxes. Most, if not all, of these conduits were designed by "rule of thumb" engineering standards to accommodate a drainage basin. More than likely, the conduits were designed to drain a gully or a creek that was crossed during construction without any major basin study. Any runoff flows used in these determinations represented undeveloped conditions.

Inputting present conditions and incorporating modern hydrologic studies allows today's engineer to predict runoff much more accurately. Altering the drainage patterns established by the existing track structure could drastically affect upstream and/or down stream properties. Drainage conduits that empty across the tracks through existing conduits or bridges are accepted as long standing pre-conditions in a hydrologic model. Figure 5.1 illustrates the various drainage basins upstream of the rail line.

Within this route there are parallel ditches, canals, and an assortment of storm conduits that traverse the tracks (see Figures 4.1 through 4.6). There are corrugated metal pipes (CMPs), reinforced concrete pipes (RCPs), reinforced concrete boxes (RCBs) and a bridge at Four Mile Creek and the I-135 canal.

A major drainage canal (shown right) exists along the north side of the existing railroad right-of-way beginning at the I-135 canal and running east to Chautauqua Street, approximately one block west of Hillside. This concrete lined canal is located 35 feet north of the centerline of the tracks and drains a creek tributary that abuts the east side of the Hillside and Ninth Street intersection.

Ditches along the rail route serve as a terminus for City street drainage. Several locations, such as Roosevelt and 10th Street, drain directly into a ditch within the railroad right-of-way. Other streets drain indirectly into railroad ditches from upstream watersheds.

Since the time the tracks were put out of service, many of these ditches have become overgrown with brush, thereby impeding the stormwater flow. This corridor is vital as part of the overall City stormwater management system.

Recreational Corridor

Creating a more complete network of trail opportunities can bring those facilities closer to a greater number of potential users and can help spread use over a larger system. As a result, more people will be able to ride trails and do so with less congestion.

The use of abandoned rail lines for recreational trail use, commonly referred to as rails-to-trails, is a growing movement within the United States. In a May 2001 accounting by the Rails-to-trails Conservancy, there are 1,109 rail-trails across the country covering over 11,300 miles. These facilities provide long stretches of uninterrupted paths to a variety of users, such as bicyclists, walkers, joggers and in-line skaters.

As previously mentioned, recreational trails can serve to connect neighborhoods with shopping and entertainment districts, schools and parks, as well as a method of commuting for a small segment of the population. Further discussion of the benefits of acquiring the BNSF line for use as a recreational trail follows.

Study of *Benefits*

Trails and greenways can enhance the quality of life for communities by providing unique recreation opportunities. The advantages of using railroad corridors for trails and linear parks are many, and the following represent the most common:

- Separation from traffic and noise.
- Making abandoned corridors more attractive.
- Better use of valuable urban land by combining corridor functions.
- Making communities better places to live by preserving and creating open spaces;
- Encouraging physical fitness and healthy lifestyles;
- Creating new opportunities for outdoor recreation and non-motorized transportation; and
- Protecting the environment

Specific to Wichita, this corridor would provide a valuable method of linking various community facilities, such as parks and bicycle paths, Wichita State University, and several commercial and employment centers (see Figure 1.2 and the Background section for further discussion on linkages).

Demographic Analysis

In order to better understand the potential value the preservation of this corridor may have on the City as a recreational trail, a brief demographic analysis is provided below.

There are approximately 20,800 people living in 8,579 households within one-half mile of the BNSF corridor, representing 6% of the City's population. Of those residents, 28% are under the age of 18, as compared with 27 % of the City's residents. Likewise, the percentage of the population over the age of 65 was quite similar between the two groups, 11% and 12% respectively. The median age of the corridor's population is notably higher (37 years) than that of the City as a whole (33.4 years). Also, the average household size within the study area is 2.75 persons, while Wichita's average household size is slightly lower at 2.44 persons.

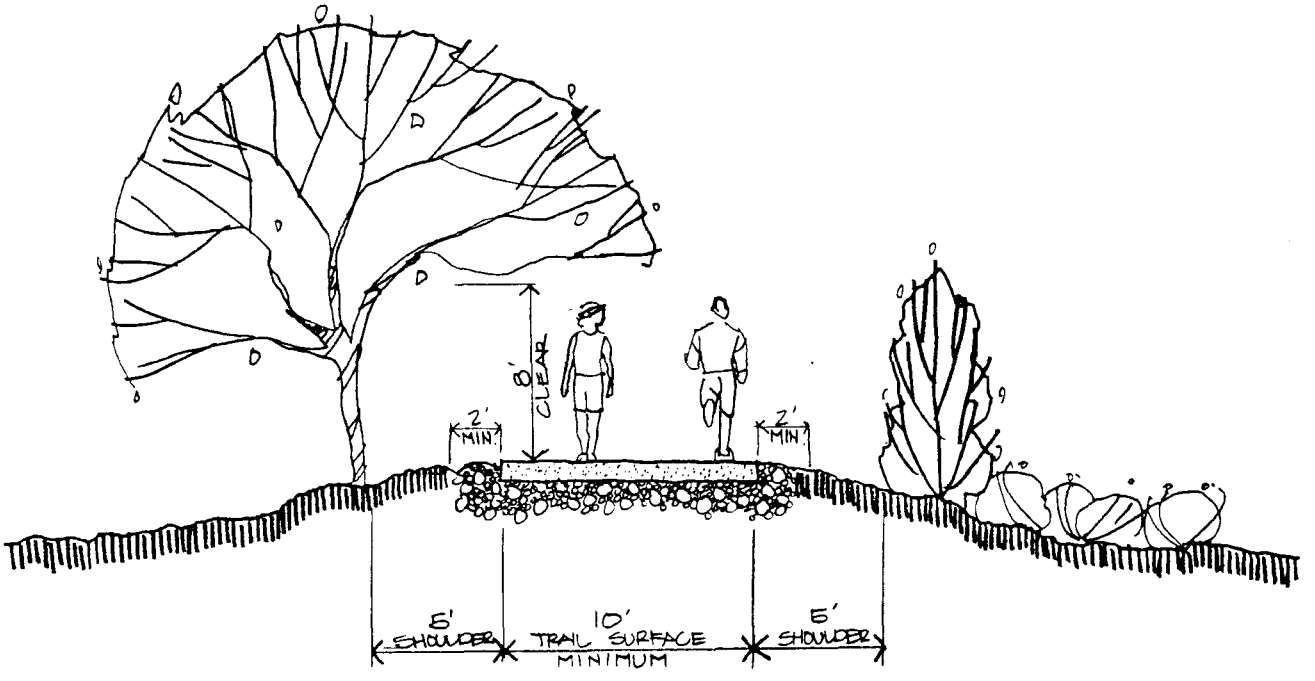
Demographic information stated in this report was compiled from the 2000 U.S. Census using a study area based on block-level data.

Design Concepts

To establish a recreational trail along this corridor, certain design criteria must be met to comply with accepted standards. Specifically, the *Guide for Development* of *Bicycle Facilities,* published by the American Association of State Highway and Transportation Officials (AASHTO) provides the foundation of most trails throughout the Country.

The AASHTO *Guide* recommends a paved width of 10 feet for a two-way directional-shared use path. Where substantial use by bicyclists, joggers, skaters, pedestrians, or large maintenance vehicles is expected or where steep grades are encountered, it may be necessary or desirable to increase the width of a shared use path 12 feet.

The AASHTO *Guide* also recommends that a graded area 3 feet or wider be maintained adjacent to both sides of the pavement to provide clearance from trees, poles, walls, fences, guardrails, or other lateral obstructions. The minimum width of such an area should not be less than 2 feet. Where shared use paths are adjacent to canals, ditches, or slopes steeper than a 3:1 slope, a separation greater than 3 feet should be considered. In addition, a physical barrier, such as railing, chain link fence or landscaping may needed depending on the depth of drop-off.



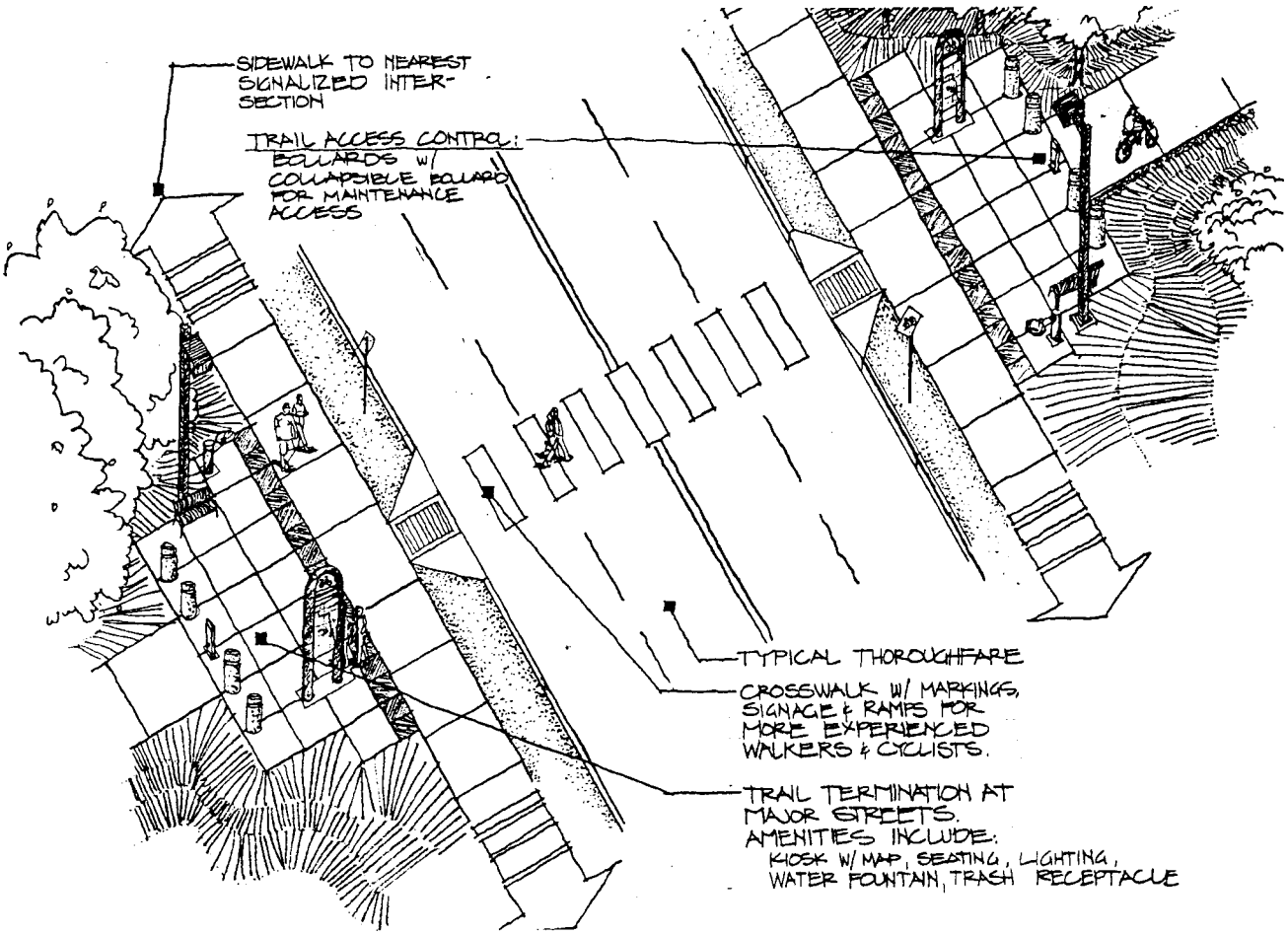
Existing sections of the track, particularly east of I-135 and to Hillside, are quite elevated with rail heights exceeding twelve (12) feet above adjoining residential neighborhoods. In these sections, existing track embankment would need to be cut down and guard rails or retaining walls installed along both sides of the prospective trail. Additional grading and excavation would be required in these areas to provide a wide enough base for pathway construction. Also in these areas, existing at-grade street crossings would either need to be reconstructed, or the trail would need to climb to match the existing crossing. It is observed that many of these at-grade crossings currently pose a blind approach towards oncoming traffic.

Other sections along the existing track would be much easier to convert to a trail. East of Oliver Road, the track is built up only several feet above existing grade. Removing the rails and ties would leave a surface requiring only minor grading.

Another topic of concern to designers involves the design of intersections between trails and roadways. As a general principle, it is best if a trail intersects a relatively low-volume roadway, particularly if it can do so at a good location (adequate sight distance, etc.).

Should a trail be constructed, at-grade street intersections become the major safety issue. Crossing secondary streets would require signing both on the trail and the street prior to the crossing. A combination of pavement striping and bollards on the trail near the intersection approach should be used to slow bicyclists and alert trail users.

Crossing major arterials such as Rock Road or Woodlawn Avenue would not be advisable using only signage and striping. Designated pedestrian crosswalks with user activated overhead traffic signals would be the required minimum facility. However, the decision to install a new traffic signal on any of these major arterials would need to be heavily weighed. Traffic flow near high traffic generators such as shopping centers, businesses, or attractions might be adversely affected should traffic be stopped in their close proximity.



The concept of grade separation, taking trail users over or under a major roadway, is one method of addressing the problems associated with arterial crossings. Tunneling beneath an arterial to allow free-flow trail traffic is an option, but only at a considerable cost to the City. Tunneling would certainly require substantial utility relocation, traffic control, and special drainage improvements (i.e. the installation of a sump pump). Additionally, pedestrian tunnels, despite design efforts to enhance safety, do not always provide a comfort level to the pedestrian or bicyclist. Mixed-use bridges built over the main thoroughfares are another option at less cost than tunneling, but still at a substantial cost. Bridges would need to comply with design criteria established by The Americans with Disability Act (ADA). These criteria require that pedestrian bridges meet certain standards for accessibility. Some of these standards are quite stringent with gentle ramp grades, landings, and handrails.

A more conservative approach would be to begin or end trail segments at major arterials. These trailheads could be designed to connect with the existing sidewalk sections along these arterial roadways, or as an added safety measure the trailhead could be built slightly below grade to physically prevent an inadvertent crossing.

Designated parking areas built primarily for trail users could be incorporated into the trail-way system, but are not included in this study.

Phasing Concept

With the corridor intersecting eleven arterials, there is the ability to phase the development of a recreational trail within mile segments. Under this assumption, a trail could be developed within that portion of the BNSF right-of-way the City chooses to acquire, and could be developed independent of other segments. These sections would typically be comprised of the pathway, lighting, park benches, water fountains, landscape (where needed), etc., all developed within mile segments.

Cost Analysis

To provide the most-accessible, all-weather bicycle and pedestrian path, concrete or asphalt paving material would be the optimum choice for construction. Using a 12-foot wide path, a concrete pathway would cost approximately $55 per linear foot. This assumes a reinforced concrete pathway with a nominal 5-inch thickness. Since concrete is more durable than asphalt, less grading and stabilization would be needed to install this type of path. Also, concrete-pumping techniques might allow for more construction options than asphalt. The cost of the concrete path alone would cost approximately $300,000 per mile.

To install the same 12-foot wide path using asphalt with a stabilized sub base, costs would be approximately $30 per linear foot. Some additional excavation and grading would be necessary to prevent asphalt from spalling, or unraveling, at the edges. Asphalt costs alone calculate to about $160,000 per mile.

Both paving options would include the following additional construction costs:

- Signage at approximately $1500 per mile.
- Mobilization, Clearing, & Site Restoration at approximately $10,000 per mile.
- Guard Rails (not required in all areas) at approximately $40,000 per mile.
- Excavation (assume about 4,500 cubic yards per mile at $4.00 per cubic yards) = $18,000 per mile.

Although the costs associated with tunneling are difficult to determine due to the number of site-specific issues, a cut and cover installation (one in which the tunnel is installed by digging and burying) could cost over $1,500,000 per installation. This includes many contingencies for utility relocation costs and traffic control. Some subterranean crossings would simply not be feasible in the event tunneling interfered with an at-grade sewer or stormwater sewer line. Overhead bridges are also expensive solutions to arterial street crossings, ranging in cost from $800,000 to $1,000,000 per bridge. Other development costs that should be considered are design, staking, and inspection, which can generally be figured to be about 20 to 25 percent of the overall construction cost.

In addition to construction costs associated with the development of a recreational trail within the BNSF right-of-way are maintenance costs the City would assume. Typical maintenance operations performed on a continuous, scheduled basis would include the following:

- Safety inspections with regard to the condition of railings, bridges, signage and trail surfaces
- Trail sweeping
- Trash removal
- Tree and shrub pruning
- Mowing vegetation along trail

Typical maintenance of a recreational trail to be performed on an irregular or as-needed basis:

- Repair or replacement of asphalt or concrete path
- Snow and ice control and removal
- Weed control
- Trail edging to maintain trail width and positive drainage
- Erosion control as needed
- Graffiti or Vandalism control

When the trail is complete and functional, costs for maintenance & administration become a factor. According to City staff, current maintenance costs for similar facilities are approximately $5,300 per mile.

To summarize the costs associated with redeveloping the BNSF railroad corridor into a recreational trail, the City could expect a per mile development cost of approximately $275,400 for an asphalt path to $443,400 for a concrete path. Assuming a recreational trail extending from the 1-135 path to the county line, there would be 9 major street crossings that, if deemed necessary, could require up to an additional $7,200,000 to $13,500,000 in grade separation improvements.

Funding Options for Recreational Trails

Railbanked recreational trails are eligible to receive federal funds for construction. The Federal Highway Administration estimated that approximately 90 percent of all rail-trail projects (whether railbanked or not) are funded from Transportation Enhancement funds (TEA-21). Other FHWA programs through which railbanked trail projects may be funded include the regular Surface Transportation Program, the Congestion Mitigation and Air Quality Improvement Program, and the Recreational Trails Program.

Short-Line Passenger Rail Service

The third element of this study is an evaluation of the Burlington Northern Santa Fe corridor's ability to be placed back in service as a short-line passenger rail operation.

There are two primary assumptions this report makes with regard to short-line passenger rail operation. The first assumption is the level of improvement that the City can expect to provide in bringing the line back into operational condition, and the second assumption is the route that the short-line passenger rail operation would follow within that portion of the corridor being abandoned.

The Federal Railroad Administration (F.R.A.) has 6 classes of railroads – Class 1 through Class 5 and an Exempt class. Each class dictates the various operational, safety, design and maintenance characteristics of each rail line. For example, a Class 2 railroad operates with a maximum operating speed of 25 miles per hour for freight trains and 30 miles per hour for passenger trains as a function of the integrity and design of the rail line.

First, in this analysis all repairs and upgrades to the track structure are based on achieving a F.R.A. Class 2 standing, as defined in the Code of Federal Regulations, 49, Part 213. As one assumption used in this evaluation, all safety protection devises at street crossings were upgraded to gates and flashing lights, as a minimum, in those areas where passenger operations are proposed. This level of protection is not required; however, the highest level of public safety is of the first concern.

Second, it is proposed by this study that the most feasible route a short-line passenger rail operation would take be from a station near 2nd Street North and Mosley Street, north to the connection with the main *Frisco* line, then east to a terminus located just east of Webb Road. This route would connect shopping, dining and entertainment opportunities in Old Town with those at Bradley Fair shopping center. Options relating to the number of stops, types of rail cars employed as well as the costs associated with passenger rail service are discussed below.

Passenger Rail Equipment

Once the track is restored to a Class 2 status, the need to assess the most appropriate, and available, method of conveying passengers along the line remains. There are several options regarding the type of equipment that can be used in these operations, such as Rail Diesel Cars, trolley cars and diesel locomotives with passenger cars. Passenger transportation can be can be provided on these lines using the following equipment:

Rail Diesel Cars (RDC): Although quite difficult to purchase, from time to time this type of equipment becomes available, usually in poor to very poor condition. Primarily the Budd Company built these units in the mid- 1950's to early 1960's. They resemble a typical passenger coach but are completely self-propelled, self-contained and are bi-directional in use. Originally powered by a Detroit diesel engine, most of the units in service today have been heavily modified to accommodate either Cat or Cummins power. The units have various seating arrangements. Generally speaking, each unit can handle 50 passengers.

BC Rail (British Colombia, Canada) currently has 18 units, the majority of which are in use daily. The use of this equipment, because of its bi-directional ability, would not require construction of the runaround tracks between Central Avenue and 3rd Street North in Old Town and the corresponding runaround track east of Webb Road, saving approximately $293,200 in proposed track structure expense.

Unfortunately, there does not appear to be any of theses units available at this time. An original unit in poor condition sells for approximately $75,000 while a top notch, modified unit can bring as much as $300,000. In researching this option for this report, the most-likely option for purchase would be from German companies Adtranz and Bombardier. Crews operating such equipment must comply with all the provisions of the Code of Federal Regulations, 49, Parts 200 through 240.

Presidents' Conference Committee (PCC) cars or "Trolley Cars": These cars are available, for instance, in Newark, New Jersey. These cars were used by Public Service Transit since 1954 and have been maintained in very good condition. Each car is electrically propelled from an overhead cantenery wire system. The cars have 54 seats and a standing room for 36, if needed. The current asking price for each unit is $50,000 F.O.B. Newark. Freight costs to Wichita would be approximately $15,000 per car. These cars are not bi-directional; therefore, we would need to acquire a pair to enable back-to-back operation. Again with a "back-to-back" operation the previously mentioned runaround tracks between Central Avenue and 3rd Street North, as well as at Webb Road would not be needed, saving $293,200 in track construction costs.

The power supply for these cars would require the stringing of overhead

cantenery for the entire length of the operation. There is a wide range of costs to build overhead centenary for many reasons. Short of getting a formal quote, which no one was willing to do at this stage, prices ranged from $75,000 per mile for a very simple and short system in Cedar Rapids, Iowa to $800,000 per mile for multi-track, high speed, centralized train control operations in Portland, Oregon. The operation contemplated here is straightforward and fairly uncomplicated resulting in an estimated cost of $150,000 per mile. The cost to develop this type of service from Old Town to the Butler County Line is approximately $1,570,500.

Diesel locomotive with passenger coaches: The traditional concept of the small passenger excursion trains has several advantages, but one expensive disadvantage - the lack of the ability of this mode to be bi-directional. This mode of transportation requires the previously mentioned $293,200 in track structure costs at the runarounds at Central Avenue and 3rd Street North, as well as at the Webb Road terminus.

The passenger coaches in question are available from several locations. The current asking price is approximately $75,000 per unit with an additional $25,000 each in needed repair and freight to Wichita. These coaches, as would all the previous modes, be air-conditioned and have approximately 75 seats.

Pursuant to a proposal solicited from WATCO, they would supply a fully serviced, maintained, fueled and F.R.A. certified locomotive and an F.R.A. certified and qualified two-man crew for $875 per day. This proposal saves the operator the cost of the purchase of the locomotive unit, the maintenance of the unit, the fuel and the certified crew.

The normal maintenance of the track structure to retain a solid F.R.A. Class 2 status from the terminus at 2nd Street North in the Old Town area of Wichita eastward to the Butler County Line is calculated at $4,000 per mile per year. The normal maintenance to include all monthly, yearly and random testing and reporting of all 22 crossing protection devises between 2nd Street North in Wichita and the Butler County Line will be $8,000 per month or $96,000 per year.

It should be noted that all equipment would need to comply with the Americans with Disability Act (ADA).

To determine the best opportunity of utilizing the Burlington Northern Santa Fe tracks for rail passenger service it is first necessary to discuss four rail options that are frequently mentioned, and to provide more definition to their operational characteristics and potential costs.

Rail passenger options for an existing at-grade rail line could be generally described as (1) light rail; (2) commuter rail; (3) excursion train; and (4) streetcar service. Each of these types of mass transit is presently in use throughout the United States. In the larger cities all four options might be available, including a fifth option, rapid rail (like Washington D.C. Metro or San Francisco BART). Due to Wichita's population size and lack of population density, the rapid rail option is not discussed.

Light Rail

The term light rail (as opposed to heavy rail or rapid rail) is applied to the newer rail systems built in the larger U.S. cities over the past 30 years, all with substantial subsidy from the Federal Urban Mass Transportation Administration, and from local taxpayers through tax referendums. These transit systems have cost hundreds of millions to build, operate, and maintain. In most cases the operating revenues have not lived up to expectations, causing an ever-increasing operating subsidy from taxpayers. Nevertheless, several cities in the region have built partial light rail systems and are continuing to add new route miles as they can be funded (Denver, St. Louis, and Dallas). Kansas City and Minneapolis-St. Paul have tried unsuccessfully for years to gain public acceptance to build their first "starter" route. Over the past 20 years the Federal Government's financial participation in these expensive transit systems has diminished considerably, causing cities to turn to their own resources to build the systems. Thus, fewer are being built today.

Light rail is inexpensive compared to rapid rail because it is mostly constructed at-grade, rather than tunneled in the downtown areas. Wherever light rail has been tunneled (Los Angeles) the costs have approached the level of rapid rail. Light rail utilizes existing abandoned rail lines wherever it fits well with primary destinations (St. Louis and San Diego). In addition, light rail always penetrates the downtown core areas of cities along main arterials, which necessitates slow speeds for the safety of pedestrians and motorists.

The average speed of light rail systems is only 13 to 15 mph nationally, which is due to the mandatory slow speeds downtown as well as the frequent stops required to serve the public along the routes. If the light rail trains stopped to pick-up passengers at all ten arterial and collector street locations in Wichita, as might be expected, the speed of the trip would be negatively effected.

The BNSF tracks under study do not reach the Wichita core area, which is the area downtown with the greatest number of high-rise office buildings. Thus to be successful the City would be forced to extend the light rail into the core area at considerable expense, or to add shuttle buses to bring passengers to the core area and the Downtown Transit Center. Causing people to shift frequently to other modes of travel (shuttles) is not conducive to productive ridership.

The attractiveness of light rail would also depend on the fares charged and would probably have to be much higher than bus fares due to the higher costs of light Rail service. If Wichita went to the expense of building such a costly system, it is likely that the City would also operate more than one train during peak travel periods, thus driving costs even higher. Frequency of service is one of the highest demands of transit patrons.

Commuter Rail

The term commuter rail describes a passenger train service that usually operates over existing rail lines in the larger metropolitan areas (Chicago, New York City, Boston, Washington D.C. and Los Angeles). The trains offer a premium service, but usually at a higher cost than other mass transit services. Riders are able to reach their downtown jobs faster than by automobile on the freeway, and the trip is comfortable. One attraction to this service is that it negates the need to pay the high cost of parking in downtown areas. Most commuter rail trips are over greater distances than the usual rides on mass transit, many as long as 40 to 50 miles, but at the higher speeds of commuter trains the elapsed time to destination is usually faster than by automobiles.

The service is mostly limited to peak hours with a second train available for those who miss the first opportunity. Once the trains leave the primary boarding location they travel "closed door" all the way to their destination, which is usually at a mass transit transfer depot in the heart of the downtown. Most riders deboard and walk a couple of blocks to their offices. To be profitable commuter trains require high population density on the origin end of the trip and high-density office concentrations on the destination end of the trip. One criticism leveled at commuter rail nationally is that it is almost exclusively for higher income executives from the affluent suburbs.

Kansas City is still in the planning stage of initiating its first commuter rail service. It is planned for the Interstate 35 corridor, from Olathe to Union Station in downtown Kansas City. One large problem is that the rail line it would need to operate on is the very busy BNSF freight line, and the BNSF is not interested in sharing the track with anyone. Another significant problem is that Union Station is not close to the Kansas City core area, which would necessitate a bus shuttle system, causing more delay in the trip. Prospects for this new transit service are poor.

The Wichita BNSF rail corridor and tracks will not permit the necessary high speeds of commuter trains (40 to 50 mph), and the trains cannot reach the core area. The necessary concentrations of potential riders with destinations to the downtown area do not exist, at this time, and Wichita's new up-scale offices are locating in suburban areas, such as Rock Road, Bradley Fair and Tallgrass Park, thus lessened the need for premium transit services. Thus, commuter rail does not appear feasible for this rail corridor.

Excursion Train

Excursion trains are for entertainment, not for commuting to jobs. Some of the more successful excursion trains are operated profitably (Durango Mountain Train), but most require subsidization of either the facilities (rail line construction and maintenance) or the operating costs. Some excursion trains have added dinning

cars to attract other customers (Minnesota Zephyr, Conway Scenic Railroad in New Hampshire, and Strasburg Railroad near Philadelphia).

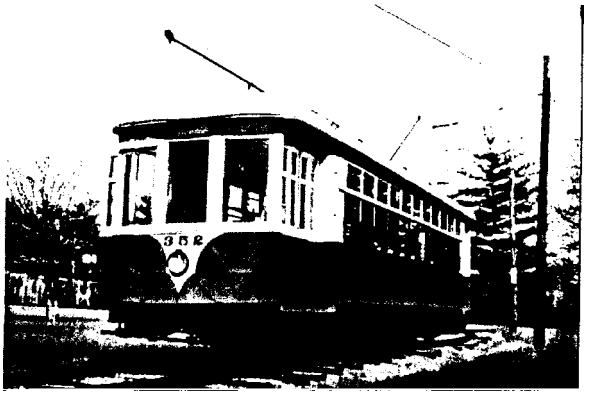
If an excursion train were to operate over the existing BNSF tracks it would probably be necessary to extend the operation into Butler County to provide a longer and more scenic ride. Leaving from Old Town, passengers would be transported at very slow speeds (less than 10 mph) northeasterly through the industrial and warehouse area to the residential areas east of the I-135 Highway corridor. They would travel past Rock Road where the newer subdivisions are now being built and into the rural areas, allowing the train to operate at higher speeds. Slow speed would again be necessary as the train passes through Andover. Proceeding into Augusta is not possible until the track is repaired in the Whitewater River area west of that city. The BNSF has estimated that the repair will cost nearly $1,000,000 to complete, and no effort has been taken, to date, to restore this track.

Trips to Andover and back might take as long as two hours. Such a rail experience might be attractive to tourists and Wichitans, especially if on-board entertainment were included. Experimentally, the service might first be offered on weekends and holidays from late spring to early fall. Such an operation would require leasing a locomotive from the local short-line railroad operator WATCO. It would also require the City to purchase the passenger cars, since WATCO probably would not want to own this equipment.

Rail passenger cars vary in seating capacity, but two 80-passenger cars could carry 160 persons per trip, which would probably be sufficient to test the viability of the concept. These rail cars have good re-sale value, so the City could probably re-coup their investment if the project were abandoned later. Obviously these passenger cars have to be in "rolling" condition and come with good air conditioning. The average cost of such good equipment is $75,000, not including the cost of transporting the cars to Wichita, which could cost as much as **$4** per mile. Class one carriers, such as the Union Pacific and the BNSF, do not give this kind of service a high priority. If the equipment has to be shipped in from overseas the costs will be much higher.

In addition, the best plan would be to ask WATCO to provide the trained operating crews. Hauling passengers is different than hauling freight and not all operators are certified to do this. Because of safety concerns the crew would need to be certified by the Federal Railroad Administration (F.R.A.) for passenger train operation.

Streetcar



Historically, Wichita and other larger cities had streetcars that were electrified by overhead wires, and ran on rails down the middle of many streets. These single car tramways could carry varying passenger loads, usually from 30 to 80 passengers. Only one operator was necessary. The streetcars were the primary means of urban mass transit for many years from the 1880s to 1930s. After World War II, and the return to manufacturing of motorized vehicles for private and public use, there was a gradual phasing out of streetcars in most cities. Electrified buses (trolleys) and motorized buses took over the mass transit business. Most private for-profit mass transportation companies went bankrupt or were acquired by the public sector and mass transit become publicly operated and subsidized everywhere in the country. The only streetcars left in operation were used as tourist attractions. Many senior citizens still remember the "good old days" when a person could ride a streetcar across town for only a nickel.

Over the past 20 years there has been a resurgence of interest in bringing back street cars, especially in historic districts, or as tourist attractions near other popular destinations, such as museums and ballparks.

Obtaining inexpensive and reliable equipment is now one of the major deterrents to re-establishing this kind of service. The other major complication is the need to re-electrify the rail corridors over which the streetcars would operate. And, if in Wichita's case the system were to be extended beyond the existing RR right of way, and onto busy streets such as Douglas Avenue, there would be serious questions raised of not only the

expense of putting in the rail and overhead wires, but also of the aesthetics of the "improvement". Another serious problem would be the loss of roadway capacity for automobiles.

Along the BNSF corridor a less expensive solution would be to use diesel propelled "street cars", but the newer models are very expensive, with costs running from $300,000 to $750,000. On the other hand, maintenance of newer vehicles would be much less than the maintenance of vintage streetcars, and the rail corridor would not have to be electrified at the cost of $1,570,500. This would allow the corridor to be used for the rail experience on a trial basis before attempting anything as expensive as re-electrification of the right-of-way. Table 1 summarizes the distinguishing characteristics of the four rail options discussed above.

Table 1: Mass Transit Alternatives

System Type	Operational Characteristics	Fares Charged	Rolling Equipment Capital Costs	Operating Costs
Light Rail	Passengers boarding several trains during peak hours and during off-peak periods as well. Many stops along the route at constructed platforms. To be successful, other routes would need to be constructed to the west, south and north.	Fares are subsidized and similar to bus fares.	Highest costs. Several trains operating frequently.	Highest costs. Large, full-time staff. Full-time, year around service, except limited service on Sundays.
Commuter Rail	Peak hour service for commuters. Passengers board at origin, then train travels at higher speed with no stops to the destination.	High fares for fast, premium service.	High costs. One or two trains serving during peak hours only.	Moderate costs. Small staff working only peak hours, year around.
Excursion Train	Weekend and holiday service for entertainment. Passengers board at Old Town and return to same point.	High fares for longer trip.	Moderate costs for 4-5 cars. One train operated on weekends and holidays during the tourist season.	Very low cost. Small staff working part time seasonally.
Streetcar	Weekend and holiday service for entertainment. Could be operated with all passengers boarding at Old Town and return to same point, or the streetcar could have stops along the way at constructed platforms.	Fares could be high if not subsidized.	Low cost, depending on type of equipment. One or two streetcars operated on weekends and holidays.	Very low cost. Small staff working weekends and holidays.

Use of Public *Transportation* near the BNSF Corridor

Presently four Wichita Transit routes serve the area where the BNSF tracks are located. They are the East 17th Street North, East 13th Street North, East Central, and the Rock Road Shuttle. While it is not possible to precisely gage the number of bus riders that would find rail transit more attractive than using the bus, it is useful to know roughly how well public transportation is used in the general vicinity of the BNSF corridor. The Wichita Transit Agency reports that these four transit routes carry a total of 455,013 riders yearly, which is roughly 22% of the W.T.A.'s 2,068,267 annual ridership. The mass transit industry considers a distance of ¼ mile from transit service the maximum distance that most people are willing to walk to use the service. This is especially true on the origin side of the trip, with people willing to walk a little further on the work/school destination end of the trip.

In eastern Wichita the BNSF tracks are ½ mile south of 21st Street North and ½ mile north of 13th Street North. Presently there is daily bus service on both 21st Street North and 13th Street North as far east as Rock Road. The Rock Road Shuttle allows bus patrons to connect to destinations north or south, on Rock Road. In addition the East 17th Street North bus runs on 17th Street North only ¼ mile from the BNSF tracks, from Oliver Street to Hydraulic Street, where it then goes by Via Christi St. Francis Hospital and on into the downtown area and the Transit Center. The East Central route is only involved with the BNSF corridor from I-135 west into the Old Town area.

Important Destinations along the *BNSF* Corridor

The four Wichita Transit bus routes presently serving the BNSF corridor have been aligned to serve the job centers in the area. Again, destinations that are within ¼ mile of transit lines are considered to have acceptable service. Although the transit routes generally stay on the main traveled streets, the Transit Agency has positioning their routes to detour into high demand areas to maximize rider opportunities. Fixed rail transit cannot detour into such areas. Table 2 outlines most of the large-scale work locations in the vicinity of the BNSF corridor and the relative distance from existing bus service and the proposed rail service.

Table 2: Important Destinations along the BNSF Corridor

Destinations	Distance from Bus Routes	Distance from Rail
Old Town	Less than one block (route on Washington and Douglas that connects to the Transit Center)	Two blocks or more (Rail depot at 2nd Street and Mosley with no connection to the transit center)
Central Business District	Routes running through area with connection to the Transit Center	0.75 to 1 mile
Via Christi-St. Francis	Buses within one block	0.3 miles through industrial and warehousing districts as well as active rail lines
KU Medical Center/County Health Agency	Buses within one block	0.3 miles
Wesley Medical Center	Buses at door on Hillside	0.25 miles
Wichita Clinic	Buses at door on Vassar	0.3 miles
Wichita State University	Buses within two to three blocks on 17th Street North	0.75 miles
Brittany Center	Buses within two blocks on 21st Street North	0.5 miles
Bradley Fair (Shopping)	Buses within one to two blocks on Rock Road	0.25 miles
Bradley Fair (Office)	Buses within three blocks on 21st Street North	0.3 miles
Tallgrass Shopping Center	Buses within one to two blocks on Rock Road	0.5 to 0.67 miles
Raytheon	Buses within one to three blocks on Webb Road	1.5 miles

Due to excessive walking distance, it is doubtful if as many as 22%, or 102,583 bus riders of the present 455,013 bus riders using those four routes, would have any interest in riding a rail vehicle. And if they did, many would cease riding because the rail option would not take them to the Transit Center or the Central Business District core area.

The lack of directness of travel limits the attractiveness of bus service, but the lack of route flexibility with rail is even more limiting to serving transit patrons.

Captive vs. Choice Riders

Basically, transit riders are divided into two categories, choice riders and captive riders. The choice riders are citizens with mobility options, who ride the bus because they want to save money, or they find driving an automobile too stressful or difficult. The captive riders are those citizens without mobility options, due to economic status or to mental or physical handicap.

Captive riders, making nearly 90% of all present bus users, dominate the Wichita Transit system ridership. Many of these captive riders are dependent on the bus transfer system, which is available at the Downtown Transit Center. These riders have destinations across town and any transit system that fails to provide this opportunity, like the rail options that end in Old Town, would not attract many of the captive riders.

Summary of Rail Options

Another key factor in limiting the potential of rail transit use on the BNSF route is that there is very little commuting demand between the downtown area and the attractions to the east side. And to make the possibilities even more difficult, there is very limited demand for the rail option in the opposite direction, from the eastside to downtown, because the track ends too far east of actual destinations.

The bus offers a distinct advantage over the rail commuting options, as it allows connections to the entire metropolitan area through transfers at the Downtown Transit Center. Whether the rail option could attract ½ of the existing riders or less is unknown, but it could not be expected to monopolize transit ridership in the subject corridor.

In summary, of the four rail options discussed, only the excursion train or the street car are thought to have any possibility of succeeding in the BNSF corridor, and both of these options, if undertaken at all, should be tested first in the most inexpensive way possible. The City should avoid any large-scale capital expense what would commit the City to any project other than a short-term operation. Obviously, the electrification of the BNSF corridor is a long-term commitment that is not recommended at this time. Likewise, extending the rail into the office core is not recommended for the same reason.

The success of implementing either the excursion train or the streetcar, on a trial basis, would depend largely on marketing and the attractiveness of on-board entertainment, which are beyond the scope of this analysis.

In general it can be seen that the BNSF rail commuting options (light rail and commuter rail) would not be effective in attracting workers, shoppers, students, or medical personnel from their present means of transportation, be that the bus or private auto.

Estimated Cost of the Excursion Train

As a test of the viability of implementing an excursion train to operate over the BNSF track, it is assumed that the City would want to minimize its capital and operating costs. Accordingly it is proposed that the test period be the seasonal period of mid-May (River Festival) through September, which would afford 112 trips on 45 days on Saturdays (3 trips), Sundays (2 trips), and holidays (3 trips). Friday trips are not included since only one trip would be possible and the assigned crew would be paid as if they worked a full day, making it too expensive. If Fridays were to be included, the test period would be 133 trips on 67 days.

Table 3: Minimum Estimated cost of the Excursion Train Option

Estimated costs	
Rail line upgrade:	$3,148,760
Other costs:	
Purchase of 2 passenger cars (80 passenger capacity) @ $75,000 each	$150,000
Depot at Old Town (ticket outlet, office, and bathrooms)	$50,000
Lease of locomotive @ $350 per day for 45 days	$15,750 per season
Contract with WATCO for a 2-man crew @ $875 per day for 45 days	$39,375 per season
Car attendants @ $10 per hour working 8 hours on Saturdays and holidays and 6 hours on Sundays.	$12,720 per season
Liability insurance assuming annual revenues of $250,000 per year	$12,500 per season
Annual maintenance of passenger cars	$25,000
Annual maintenance of depot	$5,000
Annual maintenance of track	$44,000

Up-front capital costs for the excursion train option would be approximately $3,348,760, with operational costs expected to total just over $154,300 per season.

Estimated Cost of the Street Car

The least expensive rail option is the streetcar assuming that only one self-propelled rail vehicle would be purchased to avoid the high cost of electrifying the BNSF corridor. It is also assumed that the rail would not be extended beyond Old Town.

Table **4:** Estimated cost of the Streetcar Option

Estimated costs	
Rail line upgrade:	$3,148,760
Other costs:	
Purchase of one self-propelled rail vehicle	$300,000 to $750,000
Depot at Old Town (ticket outlet, office, and bathrooms)	$50,000
3 Boarding platforms and sidewalk connections @ $12,000 each	$36,000
Contract with WATCO for a 2-man crew @ $875 per day for 45 days	$39,375 per season
Car attendants @ $10 per hour Working 8 hours on Saturdays and holidays and 6 hours on Sundays.	$12,720 per season
Liability insurance assuming Annual revenues of $250,000 per year	$12,500 per season
Annual maintenance of streetcars	$25,000
Annual maintenance of depot	$5,000
Annual maintenance of track	$44,000

In addition, the high cost of building platforms for boarding passengers along the route could be avoided if all passengers were to board in Old Town and return to Old Town at the end of the trip. Perhaps a reduced cost depot could be constructed in Old Town, but the facility would at least have to include bathrooms.

Up-front capital costs for the streetcar option would be approximately $3,484,760 to $3,934,760, with operational costs expected to total just under $138,600 per season. Other costs such as marketing, entertainment, and administration are not estimated in either option because these factors are beyond the scope of this analysis.

ACQUISITION OF CORRIDOR

If it is determined that the BNSF line is of value to the City of Wichita, there are several scenarios under which the right-of-way can be acquired.

This study was formed under the assumption that the City would pursue acquisition of the corridor under the "railbanking" process discussed at length below, as opposed to condemnation or outright purchase.

Like most railroad rights-of-way, the subject corridor was established as an easement for railroad purposes and, therefore, adjoining property owners have reversionary interest in the land, meaning that when a right-of-way is fully abandoned, the land may then be available for the full, unencumbered use by the landowner and is, therefore, not necessarily available for use as a trail.

Concerns raised by some landowners adjoining these rights-of-way about the lack of opportunity for them to either recover the use of that property gave rise to a series of legal challenges to the railbanking statute. The U.S. Supreme Court, in a 1990 decision on a case involving Vermont property owners, upheld the constitutionality of the railbanking statute, but also held that landowners may seek compensation in federal courts if they believe their property was taken without compensation by the railbanking. The Court stated that the Constitution does not prohibit the taking of private property, only the taking of property without just compensation. The Court decided that landowners that believe their property has been taken for railbanking may seek compensation in federal courts.

Overview *of* the Railbanking Process

The Congress, in 1983, amended the 1968 National Trails System Act to give interested parties the opportunity to negotiate agreements with rail carriers to use railroad rights-of-way for trails. The amendments provided rail carriers with an alternative, referred to as "railbanking," to abandoning unused rights-of-way. When rights-of-way are abandoned in Kansas, the corridor would typically revert to landowners with underlying rights to them. In contrast to formal abandonment, rail banking preserves a right-of-way for the possible restoration of rail service in the future and, in the interim, makes the property available for use as a trail.

The Surface Transportation Board (STB) administers the railbanking program under which a trail sponsor (i.e. the City) assumes full managerial, financial, and legal responsibility for a right-of-way. Railbanking is a voluntary agreement between a rail carrier proposing to abandon a right-of-way and a party interested in converting it to a trail (trail sponsor).

Before railbanking can begin, a rail carrier must initiate abandonment procedures by seeking authority for abandonment from the STB and notifying various individuals, significant users of the rail line, and state and federal agencies. It must also publish notices in local newspapers.

To begin the rail-banking process, a trail sponsor must file a trail use request in the abandonment proceeding initiated by the rail carrier. This request must include (I) a map that clearly identifies the rail corridor proposed for trail use; (2) a statement of willingness to accept financial responsibility, manage the trail, pay the property taxes on the trail, and accept responsibility for any liability arising from the use of the right-of-way as a trail; and (3) an acknowledgment that the use of the right-of-way for a trail is subject to the sponsor's continuing to meet its obligations and that future reactivation of rail service on the right-of-way is possible. Only after the STB has determined that abandonment will be permitted will it then consider any requests for trail use.

If the STB determines that the right-of-way can be abandoned and the two requirements of the statute are met, the STB authorizes the rail carrier and the trail sponsor to enter into negotiations on the use of the right-of-way as a trail. If the STB determines that the right-of-way can be abandoned and if the rail carrier agrees to negotiate, the STB will issue trail use authority to the trail sponsor to allow the parties to negotiate a trail use agreement. If the rail carrier agrees to negotiate, and no offer of financial assistance from another rail carrier to continue rail service on the line is received, the STB will issue trail use authority to the trail sponsor, who then has 180 days to negotiate an agreement with the rail carrier to rail bank the right-of-way and permit it to be used as a trail. If a railbanking agreement is reached between the parties, it may be implemented without any

analysis or approval by the STB. Also, approval of the trail use agreement is not required from the landowners that may have underlying rights to the property, the local community, or any other entity.

Because railbanked properties are not considered to be abandoned under the law, the rights-of-way remain intact and adjoining property owners do not have use of the rights-of-way. However, landowners, communities, trail users, or others with concerns about whether a trail sponsor is meeting the two requirements above can petition the STB to address these concerns.

The Surface Transportation Board has no involvement in the negotiations between the rail carrier and the trail sponsor. While the Trails Act Amendments state that a right-of-way may be preserved through donation, transfer, lease, or sale to the trail sponsor, the STB does not analyze, approve, or set the terms of trail use agreements. The STB does not receive copies of these agreements, and no approval is required from the landowners that may have underlying rights to the property, from the local community, or from any other entity. If a trail use agreement is reached, the parties may implement it without further action by the STB. If no trail use agreement is reached, the trail use authority expires, and the right-of-way may be fully abandoned.

According to the STB, if the rail carrier and trail sponsor do not come to terms on a railbanking agreement, the rail carrier could proceed to abandon the right-of-way. For those agreements that are reached, the trail sponsor may later decide not to keep the property and notify the STB that it has canceled the trail use agreement.

Landowners or other members of the public may petition the STB if they believe that a trail sponsor has no intent of using a right-of-way as a trail or that the trail sponsor is not meeting its financial and liability obligations. Because the Surface Transportation Board can only address those concerns that pertain to the two rail-banking requirements, landowners, communities, trail users, or others must rely on state and local laws, not on the STB, for the resolution of other types of problems. If the STB determines that the trail sponsor is not meeting the statutory requirements, the interim trail use authority may be revoked and the right-of-way may be declared fully abandoned, at which point the right-of-way would revert to any landowners with underlying rights to it.

The STB has noted that there can be differing types of trail use; for example, nothing in the rail-banking statute or the STB's regulations precludes a right-of-way from being developed for a mixed use, such as combining a recreational trail with a street. Similarly, the STB has noted that a trail sponsor's receipt of revenues from a utility company maintaining transmission lines along the right-of-way is permissible.

Finally, a Board official stated that a rail carrier other than the original carrier can restore rail service to all or part of rail-banked rights-of-way. Because of constraints on the infrastructure of the current rail system and the recent and potential growth in rail traffic, the STB maintains that it is possible that additional rail-banked rights-of-way will be returned to rail service.

RECOMMENDATIONS

General Recommendations regarding the Acquisition of the Corridor

Whether through railbanking or condemnation, it appears that the City will be liable for compensation to adjacent property owners that hold an interest in the underlying property, for its occupation of the corridor with water and sewer lines. With this in mind, it is recommended that the City investigate the possibility of gaining possession of the subject right-of-way through condemnation proceedings, thereby assuring a greater level of control over its future development than could be attained from railbanking.

With regard to the process of transferring BNSF's interest in the right-of-way, it is recommended that several additional due diligence be conducted. Prior to the acquisition of the corridor, further study of environmental issues may be prudent to better understand the true extent of pollution within the corridor. Likewise, it is generally recommended that a comprehensive title evaluation be conducted to be assured of exactly what the City would be obtaining from the BNSF.

Recommendations regarding use of BNSF Right-of-way as a Utility Corridor:

Understanding the extent to which the City is using the subject corridor for utilities, as well as its obligations to account for drainage in the area, it is our recommendation that the City would be justified in acquiring the corridor for utility purposes alone. Although there are no known plans for additional utility construction within this corridor beyond the current project, it is reasonable to assume that the City, or a private utility, would have a future interest in using this right-of-way.

Recommendations regarding use of BNSF Right-of-way as a Recreational Trail:

It is also our recommendation that the corridor be acquired for recreational purposes. The potential for development as a trail is in keeping with decades of planning efforts, and provides further justification for obtaining the right-of-way. As with utilities, this property holds a unique opportunity for future public benefit, especially as a component of the City's park system.

Recommendations regarding use of BNSF Right-of-way for Rail Passenger Service:

Finally, it is our recommendation that the BNSF line not be considered for freight or commuter purposes. Further, its use in a short-line passenger rail operation is of very limited benefit to the City, and would come at a substantial cost, therefore it is not a recommended option.

For years the City has sought to eliminate as many city rail crossings as possible and the abandonment of the east BNSF tracks was greatly anticipated. For the past six years no trains have used the tracks and the line was officially declared as "out-of-service". Still, with the tracks and signals present, motorists were apprehensive of these crossing locations and all school buses and public transportation vehicles still had to make full stops to comply with public safety laws.

Certainly long, slow freight trains block crossings longer than streetcars or excursion trains, but any train operation will necessitate the full public safety treatment at each of these 27 crossing locations. Likewise, some traffic safety experts believe that a frequently used rail line is more safe than one that is only used periodically, since motorists get careless with the latter, *expecting* that no train will ever get in their way.

Any impediment to the daily flow of Wichita's motorists, especially at peak hours, will not be appreciated, whether for one streetcar to pass or for a full train.

APPENDIX A - TRACK RESTORATION AND UPGRADE CALCULATIONS

The first section begins at 2nd Street North and proceeds north within the Mosley Street right-of-way across Central Ave before curving to the east at the Dolese Cement plant then crosses over the Frisco line on the north side of the cement plants access driveway. The total length of the purposed use of the line to 2nd Street North is 0.46 miles.

This track is in scrap condition. The northern connection to the East – West line does not exist. The partial removal and paving over approximately 156 feet of the existing rail on the extreme North end has occurred to facilitate the ingress driveway of Dolese Cement Company. The balance of the track is buried either in the right of way north of Central Ave or in Mosley Street south of Central to the end of track at 2nd Street. Proceeding south from Central a #10 subterranean turnout divides the track with each section proceeding southward on the outside edges of Mosley Street. The track has been within the street for an extended period of time. The rail has heavy rust and deterioration in the web, which makes it condemnable for further use. Both the tracks in Mosley have 7-foot clearances from adjacent structures in several locations between Central and 2nd. The minimum clearance allowable under the Code of Federal Regulations, Volume 49 (49CFR), part 213 is 8 1/2 feet from centerline of track. To comply with the Federal Regulations, either the track or the buildings would have to be relocated. Since the track is unusable in its current condition, it would be relocated during reconstruction to comply with all regulations.

Placing this track in usable service for a passenger operation at speed of 25 mph or less would require the following:

- Install a left-hand 90 lb. #10 turnout approximately 60 feet west of Washington Street on the Frisco line at a cost of $25,000.
- Construct 62 feet of track through the Dolese Concrete driveway @ $820 per foot (Kansas Department of Transportation uses this cost for their contracts) at a cost of $50,840.
- Install crossing protection devises at the Dolese Concrete driveway to include flashing lights and gates at a cost of $75,000.
- Completely rebuild 885 feet of 90 lb. railroad from the south edge of the Dolese Concrete driveway to the north limits of Central Ave @ $100 per foot for a cost of $88,500.
- Rebuild 85 feet of street crossing thought Central Ave @ $820 per foot at a cost of $69,700.
- Update crossing protection devises that include gates at Central Ave at a cost of $25,000.
- Rebuild 50 feet of 90 lb. railroad within Mosley Street @ $300 per foot at a cost of $15,000.
- Install a left-hand 90 lb. # 10 subterranean turnout 50 feet south of the limits of Central Ave at a cost of $48,000.
- Construct two tracks, each 374 feet of 90 lb. railroad with proper clearances on both the East and West sides of Mosley Street in a southerly direction @ $300 per foot at a cost of $224,400.
- Install a right-hand 90 lb. #10 turnout 40 feet north of the limits of 3rd Street at a cost of $48,000.
- Rebuild 44 feet of 90 lb. railroad within Mosley Street @ $300 per foot at a cost of $13,200.
- Build 72 feet of street crossing through 3rd Street @ $820 per foot at a cost of $59,040.
- Install crossing protection devices at 3rd Street to include flashing lights and gates at a cost of $75,000.
- Construct 612 feet of 90 lb. railroad with proper clearances on the east side of Mosley Street to the limits of 2nd Street on the south @ $300 per foot at a cost of $183,600.

The total cost for the repair and upgrade of the north – south portion of this track from the terminus at 2nd Street to a connection with the east – west Frisco line near Washington Street is $1,000,000.

The *Frisco* line is essentially an east – west line beginning at a connection with the Union Pacific Railroad's (UP) yard lead track located on the east side of the Dolese Cement facility. The track proceeds east with a dogleg to the northeast between Piatt Street and Oliver Street. The track returns to a tangent easterly direction at Oliver Street crossing Woodlawn, Rock, Webb, Greenwich Road, 127th Street East and 143rd Street East before going into Butler County near 159th Street East. The length of the purposed use of the track to the County line is 10.47 miles.

Placing this track in usable condition for a passenger operation of 25 mph or less would require the following:

- Rehabilitate two turnouts that permit access to the Union Pacific lead track at a cost of $10,000. This connection is essential to preclude the proposed operation from becoming an island.
- Replace 34 ties between the interchange with Union Pacific and Ohio Street @ $63 each, installed for a cost $2,142.
- Upgrade and add crossing gates to the crossing protection at Washington Street at a cost of $25,000.
- Install crossing protection devises at Ohio Street to include flashing lights and gates at a cost of $75,000.
- Rebuild 42 feet of road crossing within Ohio Street @ $820 per for at a cost of $34,400.
- Rebuild 585 feet of 90 lb. railroad that has been removed between Ohio Street and Cleveland Street @ $100 per foot at a cost of $58,500.
- Rebuild 46 feet of road crossing that has been paved over within Cleveland Street @ $820 per foot at a cost of $37,720.
- Replace 200 cross ties between Cleveland and Hydraulic @ $63.00 installed each at a cost of $12,600.
- Install crossing protection devises at Mathewson Lane to include flashing lights and gates at a cost of $75,000.
- Upgrade crossing protection at Hydraulic to include gates at a cost of $25,000.
- Install 200 cross ties between Hydraulic and Piatt Street @ $63 each installed at a cost of $12,600.
- Replace outdated crossing protection at Piatt Street with flashers and gates at a cost of $50,000.
- Replace 256 cross ties between Piatt Street and Grove Street @ $63 each installed at a cost of $16,128.
- Replace outdated crossing protection at Grove Street with flashers and gates at a cost of $50,000.
- Rebuild 48 feet of Green Street crossing @ $820 per for a cost of $39,360.
- Replace 78 cross ties between Grove Street and Green Street @ $63 each installed at a cost of $4,914.
- Replace outdated crossing protection at Green Street with flashers and gates at a cost of $50,000.
- Replace 478 cross ties between Green Street and Hillside @ $63 each installed at a cost of $30,114.
- Upgrade crossing protection and add gates at Hillside at a cost of $50,000.
- Upgrade crossing protection at 9th Street from existing cross bucks to flashing lights and gates at a cost of $75,000.
- Replace 936 cross ties between 9th Street and 13th Street @ $63 each installed at a cost of $58,968.
- Upgrade crossing protection and add gates at 13th Street at a cost of $50,000.
- Replace 231 ties between 13th street and Shocker Street @ $63 each installed at a cost of $14,553.
- Rebuild 48 feet of Shocker Street crossing that has been paved over @ $820 per foot at a cost of $39,360.

- Replace crossing protection at Shocker Street with flashing lights and gates at a cost of $50,000.
- Replace 166 cross ties between Shocker Street and Oliver Street @ $63 each installed at a cost of $10,458.
- Upgrade the crossing protection signals at Oliver Street to include gates at a cost of $25,000.
- Replace 824 cross ties between Oliver Street and Woodlawn Street @ $63 each installed at a cost of $51, 912.
- Upgrade the crossing protection at Woodlawn Street to include gates at a cost of $25,000.
- Replace 788 cross ties between Woodlawn Street and Rock Road @ $63 each installed at a cost of $49,644.
- Upgrade the crossing protection signals at Rock Road to include gates at a cost of $25,000.
- Replace 597 cross ties between Rock Road and Webb Road @$63 each installed and re-deck drainage bridge at MP 498.86 with 36 bridge ties @ $100 each installed at a cost of $41,211.
- Replace 3 missing 90 lb. rails @ $450 per rail installed at a cost of $1,350.
- Install crossing protection devices at Webb Road to include cantilevers, flashing lights, and gates at a cost of $100,000.
- Rebuild 96 feet the Webb Road crossing which has been partially paved over @ $820 per foot at a cost of $78,720.
- Install one left-hand and one right hand 90 lb. turnout @ $25,000 each installed and 350 feet of 90 lb. railroad siding @ $100 per foot installed to provide a "run-around" for turning the equipment at a cost of $85,000.
- Install ballast from the Union Pacific interchange to Webb Road on average of 500 tons per mile @ 6.27 miles @ 13.50 per ton installed at a cost of $42,323.
- Align and surface 6.27 miles @ $1.10 per foot at a cost of $36,416.

The current discussions have terminated the purposed passenger service at Webb Road. The cost of the upgrades to just the *Frisco* track structure from the Union Pacific to Webb Road is $1,505,000. The entire cost of the track structure improvements from 2nd Street in Old Town to the Webb Road terminus is approximately $2,505,000.

The 4.2 miles of track remaining eastwardly to the Butler County line adjacent to 159th Street East is 90 lb. in fair to good condition. A contractor is installing a sewer line on the right of way from MP 496.6, just east of the K-96 overpass to Webb Road. Significant damage to the railroad track structure has been done. Until this project is completed and the necessary repairs are determined, it would be speculation as to the costs to be incurred in these repairs.

Disregarding the contractor's damage, the railroad would need the following improvements. Also, note that the crosstie count is higher within this section of the corridor than normal due the track being "cherry picked" for good ties for use elsewhere by the BNSF Section gang.

- Replace 1128 cross ties between Webb Road and Greenwich Road @ $63 each installed at a cost of $71,064.
- Upgrade the crossing protection at Greenwich Road and add gates at a cost of $25,000
- Install at least 1460 cross ties (more if the contractor does not make repairs) between Greenwich Road and 127th Street East @ $63 each install at a cost of $91,980.
- Upgrade the crossing protection at 127th Street East to include gates at a cost of $25,000
- Install 1755 cross ties between 127th Street East and 143rd Street East @$63 each installed at a cost of $110,565.

- Rebuild 40 feet of 143rd Street East road crossing which has been paved over @ $820 foot at a cost of $32,800.
- Replace crossing protection at 143rd Street East to include flashing lights and gates at a cost of $75,000.
- Install 1565 cross ties between 143rd Street East and the county line adjacent to 159th Street East @ $63 each installed at a cost of $98,595.
- Install approximately 700 tons of ballast per mile between Webb Road and 159th Street @ $13.50 per ton installed for 4.2 miles at a cost of $39,690.
- Align and surface 4.2 miles @ $1.10 per foot at a cost of $24,394.
- Replace crossing protection currently provided by cross bucks at 159th Street East with flashing lights at a cost of $50,000.

The cost of the rehabilitation, including signal repairs from Webb Road to the Butler County Line, is approximately $644, 000. Therefore, the total estimated cost of the track structure improvements from 2nd Street in Old Town to the Butler County Line is approximately $3,150,000.

APPENDIX B – PROCEDURE FOR RAILBANKING

OVERVIEW OF THE RAILBANKING PROCESS

Office of Public Services

Surface Transportation Board

Washington, D.C. 20423

(202) 565-1592

April, 1997

PREFACE

This handout was prepared by the Surface Transportation Board's (STB) Office of Public Services (OPS). OPS was created to help the public participate meaningfully in STB proceedings. As part of that effort, this paper explains the standards and procedures governing abandonments. It also discusses alternative means of preserving service, including the subsidy and purchases of lines that might otherwise be abandoned.

This paper is not an agency statement approved by the STB, but OPS believes it provides a good overview of these subjects. For readers who want to explore these issues in more detail, OPS has also prepared an information bulletin entitled "So You Want to Start a Small Railroad, Surface Transportation Board Small Railroad Application Procedures"

If you want copies of these publications or have questions, please contact OPS at (202) 565-1592. One of our staff attorneys will be glad to help you.

OVERVIEW

By the mid-1970's, our nation's rail transportation system was in dire financial condition. Rail carriers were faced with increased competition from other modes of transportation (especially trucking), rising labor, fuel and maintenance expenses, and pervasive regulation that made it difficult for rail carriers to get rid of unprofitable lines. These conditions had contributed to the bankruptcy of several prominent rail carriers.

Against this background, Congress enacted a series of new laws, most notably the Staggers Rail Act of 1980 (Staggers Act). Together with the implementing regulations issued by the Interstate Commerce Commission, the STB's predecessor, this legislation sought to increase the role of the marketplace, rather than government regulation, in shaping rail transportation. In essence, the Staggers Act gave railroads more flexibility to set prices and adjust service as the market requires and thus enabled them to act more competitively. At the same time, the necessity for some regulatory protection was recognized because rail carriers still have significant market power in particular situations and because rail transportation is sometimes vital to the public. The current regulatory scheme governing abandonments and acquisitions to preserve service seeks to balance these competing considerations.

Where the market has spoken clearly and regulation is found to be unnecessary, a rail carrier may usually abandon a line, subject to appropriate labor protection and environmental conditions. Indeed, lines over which no local traffic has moved for two years without any formal complaint have been exempted from traditional regulatory scrutiny and can be abandoned simply by filing a notice with the STB.

Under the more detailed abandonment application process for active lines, the Board balances the economic burden of continued operation against the public's need for the service. Permission usually will be given to abandon lines on which there are significant operating losses. On the other hand, the carrier's ability to earn more money by disinvesting from a line and reinvesting its assets elsewhere usually is not sufficient to allow abandonment in the face of a strong public need for service.

Although it may be easier for carriers to abandon unprofitable rail lines, it is also now much easier for States and private parties to preserve rail service. The Feeder Railroad Development Program enables any financially

responsible person to force a rail carrier to sell a line that has been designated for possible abandonment, even though no abandonment application has been filed. Similarly, once an abandonment application is filed for a line, financially responsible parties can offer to subsidize the carrier's service or force the railroad to sell them the line for continued rail service. To encourage entrepreneurs and the States to operate these lines, the Board has frequently exempted them from many regulatory requirements. Also, they can often avoid expensive labor protective conditions.

With this general background, we will first set out the standards and procedures that govern formal applications to abandon a line (Part II). We will then discuss exemptions, a widely used alternative to the more detailed abandonment application process (Part III). Several alternative ways of preserving rail service will be reviewed (Part IV), including the purchase or subsidy of lines slated for abandonment. The role labor plays in these cases will be examined (Part V). Finally, we explore alternative means of preserving rail rights-of-way through rail banking (Part VI).

In 1995, Congress enacted the "ICC Termination Act" which abolished the Interstate Commerce Commission and established the Surface Transportation Board to handle rail abandonments, inter alia. The new statutory reference is 49 U.S.C. 10903. The new rules are codified at 49 CFR Parts 1105 and 1152. A quick summary of the changes to 49 CFR 1152, which became effective on January 23, 1997, is included at Appendix I. The full text of the new rule is at Appendix IV.

ABANDONMENTS

Under the ICC Termination Act of 1995 (Act), a railroad may abandon a line only with the STB's permission. The Board must determine whether the "present or future public convenience and necessity require or permit" the abandonment. In making this determination, the Board balances two competing factors. The first is the need of local communities and shippers for continued service. That need is balanced against the broader public interest in freeing railroads from financial burdens that are a drain on their overall financial health and lessen their ability to operate economically elsewhere.

The railroad first must show how continued operation of the line would be a burden to it. If it cannot establish this, the abandonment will be denied. However, the railroad does not have to show an actual operating loss. It may also calculate its "opportunity costs" for the line. These are the costs of tying up the railroad's assets in the line when those assets could earn more money elsewhere.

If the railroad does demonstrate a burden, then evidence of the public's need for continued service is examined. The effect on local businesses, surrounding communities, the local economy, and the environment may be considered. Parties opposing abandonment should present that evidence and should also challenge the railroad's financial data.

With this general introduction, we will now address in more detail the steps in the abandonment process and the kinds of factors and evidence the Board considers in deciding these cases.

A. Steps In the Abandonment Process

The Act establishes strict filing and procedural requirements for abandonment applications. (49 U.S.C. 10904). The STB has adopted regulations to implement these requirements. These regulations are found at 49 CFR 1152.

Once an abandonment application is filed, interested parties have only 45 days to file protests. Yet, an effective opposition to abandonment requires substantial preparation. The Act, therefore, also gives communities and shippers advance notice of a railroad's abandonment plans.

1. System Diagram Map

The earliest indication that a railroad intends to abandon a line comes from the carrier's system diagram map. The Act requires a rail carrier to maintain a map of all its rail lines. A Class III carrier may choose to prepare a narrative description of its lines instead of a map. On this system diagram map or in its narrative report, the carrier must identify separately (1) any line for which it expects to file an abandonment application within the next three years and (2) any line that it considers to be a potential candidate for abandonment. The Board will reject an abandonment application if any part includes a line that has not been identified as a category 1 line (abandonment application planned within 3 years) for at least 60 days before the carrier filed the abandonment application. A carrier must publish its system diagram map or narrative in a newspaper of general circulation in

each county containing a rail line in category 1, and publish all subsequent changes to its system diagram map. (The system diagram map rules are found at 49 U.S.C. 10903(c)(2) and 49 CFR 1152.10-13.)

Thus, the first indication that a railroad intends to abandon a line comes at least 60 days before the carrier's application is filed. This time should not be wasted. It gives shippers, local and State governments, and interested citizens an opportunity to meet to weigh possible opposition to abandonment, and to consider alternative means of continuing rail operations by the current railroad or another operator. For example, rate and service changes which might permit the railroad to operate more efficiently or profitably may be negotiated.

A line need not have been listed in category 2 (potentially subject to abandonment) prior to abandonment, so no weight should be attached to the fact that a line was or was not listed in category 2.

2. Notice of Intent

In addition to the system diagram map requirement, the STB requires the railroad to file a "Notice of Intent" to abandon. The railroad must publish this notice once a week for three consecutive weeks in general circulation newspapers in each country where the line is located, send it to each of the significant shippers on the line, send it to the State agency responsible for rail transportation planning, and post it at each agency station and terminal on the line. All these notice requirements must be fulfilled 15-30 days before the application is filed at the STB.

The complete form and all the information this notice must contain are set out in Section 1152.21 of the regulations. The notice describes when and how to file a protest to the proposed abandonment. It also explains how to obtain information on possible subsidy or purchase of the line. Once the Notice of Intent to abandon is received, shippers, communities, and interested citizens should organize their activities concerning the abandonment and prepare to present their position to the STB and the railroad. For help in preparing a Notice of Intent or preparing an opposition to an abandonment, please contact OPS at (202) 565-1592.

3. Abandonment Application

The abandonment application must contain detailed information about the costs and revenues on the line to be abandoned and the overall financial condition of the carrier. (A complete recitation of what must be in the application is found at 49 CFR 1152.22.) Any interested person may request a copy of the application from the carrier, and persons planning to participate should obtain a copy as soon as the application is filed and immediately begin to examine the information carefully.

Abandonment applications may contain pages of figures, tables, charts, and graphs, some of which may be less important than other parts. Opponents should make an effort to verify and, if appropriate, recalculate and reconcile key figures and totals. Shippers and small communities often lack the expertise to sort out rail financial data or the money to hire experts to do it for them. State rail officials can help in this area and should be contacted for assistance.

A railroad may ask the Board to waive certain informational requirements. For example, a railroad is normally allowed to exclude data concerning overhead or bridge traffic (shipments not actually originated or terminated on the line sought to be abandoned) if it would retain that traffic by rerouting it over other routes. However, an opponent who believes relevant information has been left out, should appeal the waiver explaining why the information is necessary. If the Board agrees, it will rescind the waiver and require the information.

4. Protests or Comments To The Proposed Abandonment

Once an application is filed, protestants have only 45 days to submit protests.(1) Protests should attempt to quantify the harm to shippers and the community and explain each protestant's interest in continued service. If possible, they should also try to critically evaluate the railroad's financial evidence. Section 1151.25(a) of the regulations lists all the information that should be in the protest.

All larger shippers and every community on the line should submit statements describing in detail their use of the line and the impact a loss of rail service will have on their operations and area. Opposition from elected officials from both the local and national level is also very helpful.

Shippers should submit car loading data and estimates of future use -- the best are showings of projected increased traffic. They should also point out any defects in the carrier's cost data. Communities and shippers should make every effort to quantify the harm from abandonment.

Protestants should describe their interest in the proceeding in as much detail as possible. For instance, if the line sought to be abandoned is used for grain shipments and the protestant is a grain producer, the statement should at least specify the number of years in farming, the farm's size, the amount of grain produced and shipped by rail, the number of people employed directly on the farm, the availability of alternative (whether rail, truck or barge) transportation, the cost of alternative transportation compared to the cost of using this line, and any other factors believed to be relevant. In addition, protestants should present any evidence they may have developed that contradicts the revenue and cost evidence the railroad has submitted. Always use specific numbers, facts and figures when possible, and explain where the information comes from or how it was developed. Cost and revenue information is usually critical. Remember: If it is shown that the line is not a financial burden to the railroad, abandonment will be denied.

Again, protests and comments to the proposed abandonment must be received at the STB within 45 days after the filing of the application. An original and 10 copies of each comment or protest must be filed with the Board. A copy must be mailed to the applicant railroad, and each copy must contain a "Certificate of Service" (a statement that the railroad was mailed a copy of the comment or protest). No set "form" exists for a protest and many letter protests are received. However, the more detailed a protest is, the more weight it will receive.

5. Modified Procedure And Oral Hearings

The Board will either set the proceeding for an oral hearing or, more often, what is called "modified procedure". (In the years 1990 and 1991, 8 of the 27 abandonment applications filed resulted in an oral hearing. During its first year in existence the STB held no oral hearings.) Modified procedure means that no oral hearing is held, and all evidence is filed in writing. Oral hearings are for the primary purpose of cross examining witnesses who have filed verified statements in the proceeding. See 49 CFR 1152.25(a). With this in mind, requests for oral hearing should specify any factual matters which are likely to be disputed and require cross-examination.

Regardless of whether modified procedure or oral hearing is used, the core of both the railroad's and protestant's case will come in the form of written evidence.

After receiving the protests and the carrier's reply, the Board must issue its decision within 110 days after the application is filed.

6. Appeals

If a party is dissatisfied with a Director's decision, it may ask the STB to reconsider the matter. Director's decisions are made during certain stages of the proceeding. For example, the Director of the Office of Proceedings makes the determination whether or not an Offer of Financial Assistance is bona fide. See 49 CFR 1152.25(e) for other decisions made by the Director.

A party that is dissatisfied with a decision of the full Board may seek judicial review of the STB's decision by filing a petition for review in the appropriate United States Court of Appeals. In situations where the abandonment application was protested a dissatisfied party may ask the STB to reopen the case if it can show material error, new evidence, or substantially changed circumstances. In an unprotested case, the only recourse for a dissatisfied party is if it can show that the carrier's abandonment application was defective (for failure to provide the required notices, for example) in which case it can ask the Board to vacate the abandonment certificate.

B. Issues In Abandonments

We will now discuss the important issues in rail abandonments and the factors the Board weighs in deciding these cases.

As explained earlier, the standard used in deciding abandonment cases is whether the railroad's burden of continued service outweighs the public's current and future need for the service.

The railroad first must establish that it is indeed suffering a loss or burden from the line. If it fails to prove this, the abandonment will be denied. However, the railroad does not have to demonstrate an "operating" loss. The Board also considers the annual "opportunity costs" of owning and operating the line. This is the cost of tying

up the railroad's assets in track, land, and materials on the line, rather than putting those assets to other, more profitable uses. It is calculated by multiplying the carrier's investment in the line (including the net liquidation value of the track and land) by an appropriate annual rate of return. Where there is evidence of public need, the Board may refuse to grant abandonment based only on opportunity cost losses. If the railroad does show a loss or burden, then the protestants' evidence of public need is examined.

The statute specifically directs the STB to consider whether the abandonment "will have a serious, adverse impact on rural and community development." 49 U.S.C. 10903(d). Protestants can address this factor through evidence showing the economic impact abandonment would have on the area. This can be done by computing (1) markets that would be lost without rail service, (2) the number of business failures or relocations and lost jobs that would result from abandonment, and (3) the number of current or future ventures (such as industrial parks) that depend upon continued rail service. Likely sponsors of this type of testimony would be shippers (using data from their own business, industry, or farm), development experts from local or state governments, elected or appointed officials, and Chamber of Commerce representatives. In sparsely populated areas, for example, discontinuance of rail service may cause a significant loss of jobs and reduce the tax base upon which the community depends to support its local school system and other important public services.

A critical factor in assessing the impact of abandonment on a rail shipper's farm or business is the possible transportation alternatives available after abandonment. If shippers have already switched to truck transportation for part of their traffic, then truck transportation may be a suitable alternative for all their traffic. Yet, truck rates may be higher than rail rates, bringing into question whether the business can survive with higher transportation costs. Also, sufficient trucks may not be available in the area to handle the increased traffic, or the local road system may not be capable of handling the increased wear and tear of truck transportation. These issues need to be fully explored and developed by protestants. This is another area where State transportation specialists can provide shippers and local communities with invaluable assistance.

Local shippers also should be able to present testimony concerning past and future use of the rail line. Reasons for the low levels of past rail shipments, such as sporadic business fluctuations, drought or other local disaster, should be explained. If shippers are expecting increased rail shipments, based on sound and defensible business forecasts, this should be documented.

Besides the economic impact of the proposed abandonment, protestants may also point out any effect that the abandonment would have on the environment. For example, increased use of alternative modes of transportation, such as trucks, might adversely affect noise levels in congested areas or pose safety problems. The environmental consequences of abandonment are assessed by the STB's Section of Energy and Environment (SEE). For more information about environmental issues you can contact SEE at (202) 565-1538. Also see the STB's regulations at 49 CFR 1105.

The balancing test the Board employs to decide abandonments has factors on both sides of the equation. To be successful, protestants should not only present the harm that they will suffer from abandonment, but they should also attempt to discredit the railroad's evidence of losses or burden from operating the line.

C. Evaluating Railroad Financial Data

Nobody opposing an abandonment can afford to ignore the railroad's financial data. The railroad must show it is incurring a loss or a burden. The railroad will attempt to show that (1) it is not receiving, and cannot reasonably expect in the future to earn, sufficient revenues from the line; and/or (2) it expects to face significant costs on the line in the future that it will not be able to recover. Normally, the past revenue generated by the line can be determined fairly accurately based on carrier and shipper records. Other data are subject to interpretation by the parties, however. These include: (1) projecting the revenues for the line; (2) isolating the historical expenses of operating and maintaining the line, and projecting future operating, maintenance and rehabilitation expenses; and (3) calculating the opportunity costs of operating the line.

Protestants who can critically evaluate this data will have a better chance of success. The assistance of a CPA or rail cost analyst is useful and can be critical. Even if there is insufficient time or money to analyze the financial data thoroughly, there are a number of key issues that should be examined.

Railroads are required to include in their abandonment applications projections of their revenues and costs on the line for a "forecast year" --the 12-month period beginning the first day of the month the application is filed. To project future revenues and costs, the railroad must necessarily make assumptions. Those assumptions

should be evaluated critically. Nobody can predict the future with certainty, and in many instances the protestants may be in as good or better position than the railroad to make accurate predictions. For example, a substantial component of revenues usually consists of the number of shipments originating or terminating on the line. Shippers on the line presumably know their own businesses and future transportation needs and may be able to dispute the railroad's projections of future traffic. Wherever possible, protestants should provide specific facts and figures to support their own projections.

Of course, projections as to the future usually are based upon prior experience. Thus, the railroad's historical data should also be examined. Again, there are some issues that can be explored even if a rail cost analyst or other expert is not available.

First, confirm that all the data are from the relevant periods. Historical cost and revenue data must be submitted for a so-called "base year." The base year is the most recent 12 month period for which data have been collected at the branch level, ending no earlier than 6 months prior to the filing of the application.

Second, be alert to circumstances that may make the historical data unrepresentative. For example, was the carrier's ability to meet requests for service impaired by a shortage of rail cars? Or was there a recession or drought that resulted in lower, unrepresentative traffic volumes and revenues?

Third, confirm that actual costs and revenues are used where required by the regulations. Maintenance-of-way expenses usually cannot be estimated by prorating expenses from a larger section of track; actual expenses incurred on the line sought to be abandoned are normally required. Similarly, depreciation of equipment, the return on investment for locomotives, and fuel costs must be based upon the type of locomotive and freight cars actually used on the line. The use of summary data based upon "Road" and "Yard" categories is generally unacceptable, because it tends to overstate costs when, as is often the case, a local or way train serves the branch line.

Fourth, if there are high rehabilitation or deferred maintenance costs, a qualified individual should examine the railroad's work papers and physically inspect the properties. It may be possible to further defer maintenance-of-way expenses for yet another year, taking those costs out of the forecast year. Usually only those rehabilitation costs necessary to meet Federal Railroad Administration minimum class I standards are allowed. As a rule of thumb, rehabilitation costs and maintenance-of-way expenses vary inversely. That is, if rehabilitation costs are high, then maintenance-of-way costs should be low.

Fifth, as with the actual and projected revenue and cost information, the railroad's claimed opportunity costs should also be examined thoroughly by an analyst. Even if this is not possible, several key components of opportunity costs can be examined.

For example, land values are usually an important factor in calculating opportunity costs. Protestants should check with the Register of Deeds to make sure the land included in the railroad's calculations is and would still be owned by the railroad in the event of abandonment. In some cases, ownership of the land reverts automatically to adjoining landholders. In addition, local bankers and real estate agents can supply accurate information on land values that may contradict the railroad's estimate of the value of its land holdings. Protestants should also (1) verify the tons of track material that will result from salvaging the line; (2) obtain an estimate of the scrap value in dollars per ton, and (3) see whether the cost of dismantling the track was deducted from the railroad's estimated sales proceeds.

It should be noted that a carrier may either calculate its own (pre-tax) cost of capital or use the industry-wide (pre-tax) cost of capital figure that is determined annually by the STB. To obtain the Board's latest cost of capital determination call the STB's Section of Costing and Financial Information at (202) 565-1533.

Finally, the railroad's projected gains or losses on its rail assets should be examined. Local real estate agents or brokers can check projections of changes in value for land, and the railroad's projections can also be compared to the index price series for historical sales of rail assets maintained by the Board. The railroad must justify departures from these trends.

EXCEPTIONS TO THE ABANDONMENT PROCESS UNDER 49 CFR 1152.50

The STB's power to exempt rail lines from the normal abandonment procedures is found in the ICC Termination Act, 49 U.S.C. 10502. Section 10502 gives the Board a broad grant of authority to exempt carriers, services and transactions from almost any and all kinds of STB regulation. The Board must exempt a

carrier, service or transaction from regulation if it finds (I) that continued regulation is unnecessary to carry out the national rail transportation policy of 49 U.S.C. 10101, and (2) that either the transaction or service is of limited scope or application of the regulatory scheme is unnecessary to protect shippers from an abuse of market power. Congress clearly contemplated that the STB would use this general exemption power broadly. The legislative history reflects Congress' desire that the Board actively exempt railroads from unnecessary regulation, particularly regulations restricting changes in rates and services. But Congress also provided the Board with authority to revoke exemptions that it has issued if and when the Board finds that its regulation is indeed necessary.

The STB and the ICC before it have both used broad exemption authority to facilitate the abandonment of lines where it believes that closer regulatory scrutiny is unnecessary, through both class exemptions and individual line exemptions. As a class, the Board has exempted the abandonment of lines over which no local traffic has moved for at least 2 years without formal complaint about a lack of service. Where a line has generated traffic within the last 2 years, the railroad may seek to persuade the STB that an exemption is nevertheless appropriate for that individual line.

These exemptions are widely used.

Class Exemption: Out-of-Service Lines

To invoke the class exemption for out-of-service lines, a carrier must file a notice at the Board certifying that (1) no local traffic has moved on the line for the past 2 years; (2) any overhead traffic that has moved over the line can be rerouted over other lines; and (3) no formal complaint about a lack of service is pending or has been decided in favor of the shipper.

Unlike the traditional application process, no Notice of Intent to abandon or system diagram map or narrative notice is required. However, 10 days before filing the exemption notice with the Board, the railroad must notify the affected State's Public Service Board or equivalent agency of its intention to do so. The railroad must also send an advance environmental notice to the State, in accordance with STB regulation 49 CFR 1105.11.

The STB will publish the exemption notice in the Federal Register within 20 days after it is filed. Thirty (30) days after the Federal Register notice, the railroad may abandon the line, unless the Board stays the exemption.

Stay requests that raise transportation concerns must be filed within 10 days after the exemption notice is published in the Federal Register. Stay requests based on environmental or historic preservation concerns may be filed at any time but must be file sufficiently in advance of the effective date for the Board to consider and act on the petition before the notice becomes effective. Offers to subsidize or purchase the line must be filed within 30 days after the Federal Register publication.

In addition, parties may ask the Board to reject the notice or reconsider the exemption as it applies to a particular line. Petitions to reject or reconsider may be filed within 20 days after the Federal Register notice. After the exemption takes effect, parties may ask the STB to revoke the exemption. Petitions to revoke may be filed at any time.

The STB will reject the notice if the information contained in the request is false or misleading. Therefore, if local traffic has moved on the line within the last 2 years, the exemption will be rejected.

Although environmental concerns, public need for continued service, and other issues can be raised in a petition to reconsider or revoke, the Board will disallow the exemption only in extraordinary cases.

If use of the class exemption is disallowed for a line, the railroad is still free to apply for abandonment of the line under the regular application procedures discussed above (or seek an individual exemption under the procedures discussed below). The complete regulations applying to this class exemption are found at 49 CFR 1152.50. Also see the attached STB Timetable for class exemption proceedings at Appendix II.

B. Individual Exemptions under 49 CFR 1152.60

As with the out-of-service lines exemption, no Notice of Intent to abandon or system diagram map or narrative notice is required when a request for an individual exemption is filed. The only notice a railroad must give before filing an individual exemption request is an environmental notice to the designated State agency in

each state where abandonment is proposed. To obtain the name and address of the designated agency in your State call the Board's Section of Energy and Environment at (202) 565-1538.

The Board must publish notice of the proposed exemption in the Federal Register 20 days after it is filed. No further public notice is given even if the petition is denied. Carriers frequently will serve a copy of their petition on any shippers on the line but are not required to give notice when the petition is granted or denied. Interested persons can be notified individually by the Board, if they ask that their names be placed on the Board's service list in a particular case. Parties of record (applicants and protestants) are placed on the service list automatically, but other interested persons should notify the Board's Office of the Secretary, 1925 K Street, N.W., Washington, D.C. 20423 of their desire to be served with copies of all decisions in a particular case.

A petition for an exemption generally will include only a brief description of the relevant facts. It need not be, and typically is not, accompanied by detailed financial or other information.

Persons opposing an exemption must file an opposition within 20 days after publication of the Federal Register notice. Offers to purchase or subsidize the line must be filed 120 days after the filing of the petition or exemption or 10 days after the service of the Board's decision granting the exemption, whichever occurs sooner. To receive a copy of that decision, you must have notified the Office of the Secretary of your interest in the case and have asked to be put on the service list as instructed, supra.

Petitions to stay the effective date of the decision may be filed in either "Petition" (Individual exemption) or "Notice" (class exemption cases). It should be noted that administrative agencies, like the Courts, have developed firm criteria for staying administrative action. To justify a stay, a petitioner must demonstrate that:

(1) there is a strong, and the emphasis is on strong, likelihood that it will prevail on the merits;

(2) it will suffer irreparable harm in the absence of a stay;

(3) other interested parties will not be substantially harmed by the issuance of a stay; and

(4) the public interest supports the granting of the stay.

The Board, as do the Courts, gives very careful consideration to each of the above criteria and has required a strong substantive showing on all of the four factors. While the showing of irreparable injury may vary from case to case, the key consideration is irreparable, and injuries that can be corrected later (however substantial in terms of money, time and energy) may not be enough to justify a stay. Similarly, in determining the public interest factor, the interests of private litigants must give way to the realization of public purposes. The burden of making a strong showing on all four of the above factors rests with the petitioner to convince the Courts or the Board that such extraordinary relief is warranted.

Where possible, parties opposed to the exemption should file an opposition or a protest with the Board before it acts on the exemption request. Even in the absence of a formal notice requirement, community leaders and shippers often are aware of a railroad's plan to seek an exemption before the carrier files its petition.

Protests and petitions for reconsideration of individual exemptions should include essentially the same kind of facts that would be included in a regular abandonment case. For instance, shippers should explain their business operations, quantify their use of the involved rail line, discuss the availability and any additional cost of alternative transportation services, and explain the impact loss of the rail service would have on their businesses and the community. To the extent possible, protestants also should try to critically evaluate any financial information and traffic projections submitted by the railroad.

If the Board denies a carrier's request for an exemption, the carrier is free to file for authority to abandon under the regular application procedures discussed earlier.

IV. ALTERNATIVES TO ABANDONMENT

Users and interested parties should consider alternatives to abandonment at the first sign a carrier may be contemplating abandonment. The fact that the existing railroad believes the line is no longer economically viable does not necessarily mean the line cannot continue operations under other arrangements. There are many examples of small "short line" railroads operating on lines that the main line railroad sought to abandon. Congress and the STB have made it easier to preserve rail service by acquiring or subsidizing rail lines. These options will be briefly outlined below.

A. Forced Sales and Subsidies

To encourage continued service, Congress and the STB have adopted procedures that make it possible to force the sale or subsidy of lines slated for abandonment where the parties cannot agree on the price or terms of a subsidy.

Lines Approved For Abandonment

Under the offer of financial assistance (OFA) procedures, any financially responsible party seeking to continue service on a line approved for abandonment (or exempted) may compel the railroad to sell or conduct subsidized operations over the line. The statutory requirements and STB regulations concerning offers of financial assistance are contained at 49 U.S.C. 10904 and 49 CFR 1152.27, respectively.

Parties may request data on subsidy and acquisition costs from applicants in abandonment proceedings as soon as the Notice of Intent to abandon is filed. This includes (1) an estimate of the minimum purchase price or annual subsidy needed to keep the line in operation, (2) reports on the physical condition of the line, and (3) traffic and other data necessary to determine the amount of annual financial assistance needed to continue service. Any one who believes subsidy or acquisition is a possibility should request this information immediately and begin a thorough feasibility study. Often the State will assist the railroad by providing substantial money for rehabilitation of the line.

In class exemption cases, where the railroad files a Notice of Exemption, Offers of Financial Assistance must be filed within 10 days of the publication of the Notice of Exemption in the Federal Register. In individual exemption cases where the carrier files a Petition for Exemption and in cases where the carrier files a full abandonment application and OFA must be filed within 10 days of the service date of the Board's order granting the exemption or abandonment application or within 120 days after the application or petition for exemption is filed, whichever is sooner. It is very important for a potential offeror to be aware of both the filing date and the date of the Board's decision. To do this, the potential offeror should ask to be placed on the Board's service list(2) for the relevant abandonment proceeding, so that the offeror will be advised as soon as any decision is in the case is served.

Each OFA is reviewed by the Board to determine whether the offeror is financially responsible and whether the offer itself is reasonable. A copy of the offeror's annual report or other financial statements should be submitted with the offer to show its financial responsibility. The STB assumes a State or local government entity to be financially responsible.

As to the reasonableness of the offer, a subsidy should cover the railroad's avoidable operating losses on the line, plus a reasonable return on the value of the line. An offer to purchase should equal the acquisition cost of the line (the net liquidation or going concern value of the line, whichever is higher). The offeror should explain how its offer was calculated and explain any disparity between its offer and the carrier's estimate.(3) If the Board finds that the offeror is financially responsible and the offer is reasonable, it will postpone the abandonment and give the parties an opportunity to negotiate.

If negotiations are successful and the parties voluntarily enter into a purchase (or subsidy) agreement which will result in continued rail service, the Board is required to approve the transaction and dismiss the abandonment application.

Should the parties fail to agree on the amount or terms of subsidy or purchase, either party may ask the STB (within 30 days after the offer is filed) to establish terms and conditions. The Board must issue a decision setting the terms and conditions, within 30 days after the request is made. The offeror then has 10 days to accept or reject the STB's terms and conditions. If the offeror chooses to accept them, then the railroad by law is forced to comply with them.

When a railroad receives more than one OFA, it can select the offeror with whom it wishes to transact business. Moreover, if the STB establishes terms and conditions at the request of an offeror who subsequently withdraws, then any other qualified offeror may take its place, forcing the railroad to go through with the subsidy or sale under those terms and conditions.

Certain conditions apply to sales under Section 10904(f)(4)(A). A purchaser may not transfer the line or discontinue service over the line for at least 2 years after consummation. After that time period, the purchaser

may transfer the line back to the selling carrier, but it must wait at least 5 years before it can sell the line to others.

The financial assistance provisions of Section 10904 also apply where the Board exempts an abandonment from the formal application process. There are some differences however, particularly as to timing. For example, in exemption proceedings, persons interested in purchasing or subsidizing the line must first submit to the STB and the railroad a written expression of their intent to make such an offer. This expression of intent must be received within 10 days after notice of the exemption is published in the Federal Register. Once the expression of intent is received, the exemption will be automatically stayed for 40 days. The offer itself is due 30 days after the Federal Register notice. For more information on these procedures see the STB's regulations at 49 CFR 1152.27.

2. Purchase of Lines Potentially Subject to Abandonment

The feeder railroad development program was designed as an alternative to abandonment. Congress envisioned it as a method of allowing shippers, communities, or other interested parties to acquire rail lines before an abandonment application is filed. If a rail line has been listed on a carrier's system diagram map as potentially subject to abandonment, a financially responsible person can compel the Board to require a railroad to sell it the line(4). The price for such a sale is either agreed to by the parties or set by the Board. The statutory procedures for this program are found at 49 U.S.C. 10907 and the STB's regulations are detailed at 49 CFR 1151.

In short, a proceeding commences upon the filing of a feeder line application with the Board. The applicant must show, among other things, that it can (1) pay the net liquidation value of the line or its going concern value, whichever is higher, and (2) provide adequate service for at least 3 years. The Board has 15 days to reject the application if it does not contain the prescribed information or to accept it by filing a Notice in the Federal Register no later than 30 days after the application is filed. Within 30 days after the application is accepted, any other interested party may file a competing application to acquire all or any portion of the same line. The owning railroad and other interested parties may submit verified statements containing their evidence and arguments within 60 days after the initial application is accepted. Within 80 days after the initial application is accepted, offerors may file verified replies. The STB must publish its decision in the Federal Register. Within 10 days of the service date of the decision, the offeror must file a notice with the STB and the owning railroad either accepting or rejecting the Board's terms. If two or more offerors accept the STB's terms, the owning railroad has 15 days from the service date of the Board's decision to select the offeror with whom it wishes to transact business and to notify the STB and offerors. If the parties agree on a price then that price will be the final sale price.

In theory, this program has two major advantages. It allows the parties to save the time and expense involved in the abandonment process, and it allows the new owners to take over operation of a line before further downgrading occurs. The program however, has not lived up to its potential, in part because it places the railroad and new short line owner in an adversarial relationship from the outset. It forces the railroad to sell at a price it may not agree upon and requires the newly created shortline to then develop a relationship with the railroad (with whom it must interchange traffic to reach the main line) in order to function in its new venture.

B. Voluntary Sales and Operations

Parties interested in preserving rail service need not wait until abandonment is approved to negotiate a voluntary purchase of a line proposed for abandonment or for that matter any active rail line. To make purchases of lines that might otherwise be abandoned more attractive to potential buyers, the STB has exempted these purchases from regulation. Special provisions have also been adopted to encourage continued service on abandoned lines acquired by States.

Class Exemptions

The statutory standards for voluntary acquisitions are found in 49 U.S.C. 10901, 10902, and 11323. Section 10901 applies only when (1) a non-carrier acquires a rail line, and (2) an existing carrier acquires an inactive line (a line that is already lawfully abandoned). Acquisitions of active rail lines by existing carriers fall under Section 10902 or 11323. These formal application procedures are seldom used to preserve rail service on lines threatened with abandonment. Instead, voluntary purchases of lines subject to abandonment are almost

always consummated under exemptions to the formal acquisition procedures. These exemptions are discussed below.

Section 10901 Acquisitions

Following the Staggers Act and deregulation of the railroads, large Class 1 carriers began to sell or abandon unprofitable or marginally profitable lines. Requests to acquire and continue service over these lines were usually unopposed and were almost always approved because they were in the public interest. This led the ICC to promulgate broad class exemption procedures in 1986.(5) The current rules are found in 49 CFR 1150 Subpart D. Most non-carrier acquisitions and operations are now exempt from formal regulation under Section 10901, as are all carrier acquisitions of abandoned lines. When a Class II or Class III carrier acquires a line, it is governed by 49 U.S.C. 10902.

To invoke the class exemption, the acquiring party must file a verified notice including general information about the transaction, and a caption summary which will be used to provide public notice of the transaction. The exemption procedures differ depending on the carrier's size (in terms of gross revenue). If the transaction will create a Class III (smallest size) railroad, the exemption will be effective 7 days after the notice is filed.

Section 11323 Transactions

Class exemptions have also been established for seven kinds of transactions that would otherwise require approval under 49 U.S.C. 11323 -- the statute applicable to carrier acquisitions of active rail lines. The most important for our discussion here are (1) acquisition of a line which has already been approved for abandonment and would not constitute a major market extension, (2) acquisition of nonconnecting lines, and (3) acquisition of trackage rights. (The last two categories do have some qualifications not relevant here.) See 49 CFR 1180.2(d).

To invoke these exemptions, the carrier must file a verified notice, at least one week before the transaction is to be consummated, containing the information listed in the Board's regulations at 49 CFR 1180.4(g)(1). To qualify for an exemption for acquisition or renewal of trackage rights agreements, a caption summary must be filed as well. See 49 CFR 1180.4(g)(2)(i).

Individual Exemptions

Where no class exemption applies, an individual exemption may be sought for almost any small rail acquisition or operation, under the Board's general exemption authority at 49 U.S.C. 10502. Such requests for individual exemptions should be tailored to the particular situation involved.

The statute itself exempts some types of rail operations and transactions from STB regulation. The acquisition or use of spur, industrial, team, switching or side tracks is exempt under 49 U.S.C. 10906. These statutory exemptions are defined narrowly and the facts of each situation must be carefully examined to determine if the exemption applies.

V. LABOR ISSUES

No discussion of the acquisition and abandonment of rail lines would be complete without recognizing the increased importance rail labor plays in many of these cases. Labor witnesses often take an active role in opposing abandonment applications and other proceedings. In addition, the ICC Termination Act provides certain protection for employees of railroads engaging in some major changes in operations. It requires railroads to protect their employees from financial loss for a period of up to 6 years and to provide other protection relating to benefits and seniority.

Labor issues may arise in any rail transaction. The STB imposes labor protective conditions (LPC's) in most abandonments.

The conditions have been crafted differently for each situation. Generally there are the Oregon Short Line conditions imposed in abandonment cases, the Mendocino Coast conditions imposed in lease transactions, and the New York Dock conditions imposed in line sales to existing carriers(6)

When imposed, these conditions obligate the selling or abandoning railroad and, in some cases, can also be imposed on the acquiring railroad. When the acquiring entity is an established railroad or is a wholly owned subsidiary that is not independent from its rail parent, conditions may be imposed on both the acquiring and selling carriers. But where there is an acquisition of a line by a non-carrier or a Class III carrier, the employees

are not entitled to any labor protection. Moreover, LPC's are not imposed for forced sales under the offer of financial assistance provisions of Section 10904 and are imposed only on the seller when there is a forced sale under the Feeder Railroad Development Program. (7)

The Board is not allowed to use its exemption powers under 49 U.S.C. 10502 to excuse carriers from providing employees with the LPC's they are due.

It is important at the beginning of any abandonment or acquisition proceeding to determine what position, if any, rail labor intends to take. There are some abandonments which will have minimal or no effect on rail jobs. In those cases, rail labor often decides not to participate. There are other situations in which labor witnesses play an active role, challenging railroad costing testimony and providing conflicting data in such areas as labor costs, track maintenance, and the current condition of the track and rolling stock.

VI. ALTERNATIVE USES FOR RAIL RIGHTS-OF-WAY

The ICC Termination Act and the National Rails to Trails Act, along with the STB's regulations give interested parties the opportunity to negotiate voluntary agreements to use a railroad right-of-way that otherwise would be abandoned for recreational or other public use, such as a commuter rail service or a highway. These methods of preserving a railroad corridor are known as "rail banking" meaning that the right-of-way is preserved for potential future use as a railroad. Many railroads do not own the land on which their tracks lie. Rather, they have easements over the land of adjoining property owners. Unless those easements are "rail-banked" by converting them to a trail or other public use, they are extinguished.(8) Some rights-of-way which were "banked" have been reactivated. The rules for filing a request for a public use condition are slightly different from those which apply to the filing of a trails use request. The sample request which appears in this bulletin as Appendix III is a request for both types of conditions. Proponents often ask for both conditions in the same request in order to take advantage of the benefits of each type of condition. This disadvantage of this approach is that the request for a trails use condition has a filing fee, while a request for public use condition does not.

Since filing fees for all types of cases change at least once a year, it is advisable to contact the Board's Office of Public Services at (202) 565-1592 to determine the current fee, if any, before filing any pleading.

A. Public Use Conditions

Under the terms of the ICC Termination Act at 49 U.S.C. 10905, when the Board approves or exempts an abandonment it must determine whether the rail line is suitable for alternative public use, such as highways, other forms of mass transit, conservation, energy production or transmission, or recreation. If it is, the Board may prohibit the railroad from selling or otherwise disposing of the rail corridor for up to 180 days after the effective date of the decision or notice authorizing abandonment. During the 180 day period, interested persons may negotiate with the railroad to acquire the property for public use. The railroad's consent is unnecessary for the imposition of this negotiating period. If the parties fail to reach an agreement within the 180 day period(9), the Board must allow the railroad to fully abandon the line and dispose of its property. It cannot require the railroad to sell its property for public use.

The Board will only impose a public use condition when it has received a request to do so pursuant to 49 CFR 1152.28. The request must:

1. state the condition sought;

2. explain the public importance of the condition;

3. state the period of time for the condition (which cannot exceed 180 days);and

provide justification for the requested period of time.

A "Certificate of Service" indicating that a copy of the public use request has been served on the carrier seeking abandonment at its address of record.

A sample request for Public Use Condition is provided in Appendix III. An original and 10 copies must be submitted to the Board.

Timing is important. In an application for abandonment, the public use proponent must file the request within 45 days of the filing of the application, i.e. 25 days after the notice of the application appears in the Federal

Register. In exemption cases, whether the exemption is a class exemption (notice) or an individually sought exemption (petition), the public use condition request must be filed within 20 days after the Federal Register publication appears.

Request for Trail Use Conditions

To begin the trail use process, a trail proponent must file a trail use request in the proceeding initiated by the railroad to abandon the line. A trail use request has no effect on the Board's decision whether to give a railroad permission to abandon. It is considered only after the Board has decided to permit the abandonment.

Under 49 CFR 1152.29, the trail use request must include:

1. A map which clearly identifies the rail corridor (including mileposts) which is proposed for trail use,

2. A statement of willingness to accept financial responsibility which indicates the proponent's willingness to manage the trail, pay property taxes on the trail and accept responsibility for any liability arising from the use of the rail corridor as a trail, and.

3. An acknowledgment that trail use is subject to the user's continuing to meet the above obligations, and the possibility of future reactivation of rail service on the corridor.

A "Certificate of Service" indicating that a copy of the trails use request has been served on the carrier seeking abandonment at its address of record.

A sample public use condition/trails use request appears at Appendix III. An original and 10 copies of the request must be filed with the Board and a copy served on the railroad.

Unlike the public use condition, the trail use condition will only be imposed if the railroad consents. If the railroad does agree, then a condition is imposed which prohibits the rail carrier from otherwise disposing of the rail corridor for 180 days while the parties negotiate an agreement. The Board has granted an extension of that 180-day period in cases where the parties jointly request it indicating that they are close to agreement.

As with the public use condition request, timing in very important. In an abandonment application, trail use requests must be filed within 45 days of the filing of the application i.e., 25 days after the publication of the application in the Federal Register. The rail carrier seeking abandonment authority then has 15 days to notify the Board whether and with whom (if more than one proponent has submitted a request) it intends to negotiate a trail use agreement. In class exemption cases, a trails use request must be filed within 10 days of the appearance of the notice in the Federal Register. Note that this is 10 days earlier than a public use condition request is due. In an individual exemption case (petition), a trails use request must be filed with 20 days of the appearance of the Federal Register notice. In both types of exemption cases the carrier has 10 after the trails use request is received to notify the Board whether and with whom if intends to negotiate a trails use agreement.

Note: Appendices referred to in this booklet are only available by mail. To request the appendices call the Office Public Services at 202 565-1592 or write to: Office of Public Services, Surface Transportation Board, 1925 K Street, N.W., Washington D.C. 20423

1. NOTE: Oral Hearing requests must be filed within 10 days of receipt of the application. The Board must act on those requests within 15 days of the filing of the application. See time line in Appendix I.

2. Write to the Office of the Secretary, Surface Transportation Board, 1925 K Street, N.W., Washington, D.C. 20423 and identify the docket number of the proceeding .

3. Any carrier seeking abandonment authority from the Board must provide certain information to a party considering making an offer of financial assistance, including an estimate of the annual subsidy and minimum purchase price required to keep the line or a portion of the line in operation. See 49 U.S.C. 10904(b)(1) and OPS's information bulletin entitled "So You Want to Start a Small Railroad" which provides a more detailed discussion of the OFA process.

4. Even if a line is not shown on the carrier's system diagram map as a candidate for potential abandonment, shippers and communities may seek to compel the Board to require a railroad to sell the line by proving that the "public convenience and necessity" requires or permits the sale. This test, however, is more difficult to satisfy.

5. The STB has modified these rules by decision served November 18, 1996 at Ex parte 529, Class Exemption for Acquisition or Operation of Rail Lines by Class III Rail Carriers under 49 U.S.C. 10902.

6. These conditions are set forth in Oregon Short Line R. Co.-- Abandonment -- Goshen, 360 ICC 91 (1979); Mendocino Coast Ry., Inc. -- Lease and Operate, 354 ICC 732 (1978) and 360 ICC 653 (1980), as clarified in Wilmington Terminal RR, Inc. -- Pur. and Lease -- CSX Transp., Inc., 6 ICC 2d 799 (1990), aff'd sub nom, Railway Labor Executives' Ass'n v. ICC, 930 F2d 511 (6th Cir. 1991) (Wilmington Terminal); and New York Dock Ry. -- Control -- Brooklyn Eastern Dist., 360 ICC 60 (1979), as clarified in Wilmington Terminal, supra. They are all variations of the original LPC agreement hammered out between labor and management in 1936, the Washington Job Protection Agreement.

7. Feeder line purchasers are required to use the existing employees on the line to the extent possible. See 49 U.S.C. 10910 (e) and (j).

8. Because real estate law and practice differs from state to state, we refer to landowners along the rail line as "adjoining" property owners. Sometimes adjoining property owners may have what is commonly called a "reversionary" interest in the land, meaning that upon the termination of the easement, the land is then available for the full, unencumbered use of the landowner or fee holder. In some states, when a rail use terminates, the land on which the rail line sits passes, as a matter of state law, to the adjoining landowners even when those landowners had no title to the land prior to its use as rail property. In some cases, railroads do own the land on which the track sits in fee simple and can dispose of it as they wish.

9. Unlike trails use conditions, public use conditions cannot be extended beyond the statutorily imposed 180 day limit, even if the parties' consent.

APPENDIX C – RELEVANT STATE STATUTES

58-3211

Chapter 58. - PERSONAL AND REAL PROPERTY

PART 6. - MISCELLANEOUS PROVISIONS

Article 32. - LAND AND WATER RECREATIONAL AREAS

58-3211. Definitions. As used in this act:

(a) "Adjacent property owner" means a person or entity, other than a responsible party, who owns property or facilities on or adjacent to a recreational trail.

(b) "Recreational trail" means a trail created pursuant to subsection (d) of 16 U.S.C. 1247 (1983).

(c) "Responsible party" means any person, for-profit entity, not-for-profit entity or governmental entity that is responsible for developing, operating or maintaining a recreational trail.

History: L. 1996, ch. 223, § 1; July 1.

58-3212

Chapter 58. - PERSONAL AND REAL PROPERTY

PART 6. - MISCELLANEOUS PROVISIONS

Article 32. - LAND AND WATER RECREATIONAL AREAS

58-3212. Duties of responsible party.

(a) The responsible party, at all times after transfer of the deed to the responsible party, shall:

(1) Perform the duties imposed by K.S.A. 2-1314 and amendments thereto along the recreational trail;

(2) Provide for the safety, use and accessibility of existing easements, utility facilities and access licenses along the recreational trail;

(3) Provide for trail-user education and signs regarding trespassing laws and safety along the recreational trail;

(4) Provide for litter control and the enforcement of laws prohibiting littering along the recreational trail, including but not limited to trail-user education and signs about laws prohibiting littering and the provision of trash receptacles and the cleanup of trash and litter;

(5) Develop and maintain the recreational trail in a condition that does not create a fire hazard;

(6) Designate the recreational trail for non-motorized vehicle use with exceptions only for motorized wheelchairs and maintenance, law enforcement and emergency vehicles;

(7) Prohibit hunting or trapping on or from the recreational trail;

(8) Provide for law enforcement along the recreational trail;

(9) Grant easements to adjacent property owners to permit such owners to cross the recreational trail in a reasonable manner consistent with the use of the adjacent property and with K.S.A. 66-301 through 66-303, and amendments thereto;

(10) (A) maintain any existing fencing between the trail and adjacent property; (B) maintain any future fencing installed between the trail and adjacent property; (C) install between the trail and adjacent property fencing corresponding in class to that maintained on the remaining sides of such adjacent property; and (D) on request of an adjacent property owner, pay one-half the cost of installing fencing between the trail and such property owner's adjacent property with a fence of the class requested by such property owner, if not all remaining sides of such property are fenced; and

(11) (A) maintain the trail; (B) maintain all bridges, culverts, roadway intersections and crossings on the trail, essential to the reasonable and prudent operation of the trail or needed for drainage, flood control or the use of easements for crossing the trail between adjacent properties, or cause maintenance thereof by other parties that have assumed contractual responsibility therefor; and (C) install and maintain any warranted traffic signs on the trail.

(b) If the responsible party is not a governmental entity, the responsible party shall file with the county clerk of each county where a portion of the recreational trail is or will be located a bond or proof of an escrow account in a Kansas financial institution, as defined by K.S.A. 16-117 and amendments thereto, payable to the county. The bond or proof of an escrow account shall be filed at the time of transfer of the deed to the responsible party and annually thereafter. The bond or escrow account shall be conditioned on the responsible party's performance, and shall be in an amount agreed upon between the responsible party and the county commission as sufficient to fully cover the annual costs, of:

(1) Weed control along the trail, as required by subsection (a)(1);

(2) Litter control along the trail, as required by subsection (a)(4);

(3) Maintenance of the trail in a condition that does not create a fire hazard, as required by subsection (a)(5);

(4) Installation and maintenance of fencing between the trail and adjacent property within the county, as required by subsection (a)(10); and

(5) Installation and maintenance of signs along the trail, as required by subsections (a)(3), (a)(4) and (a)(11)(C).

If separate bonds are submitted to or escrow accounts established for the various counties through which the trail transverses, the annual costs listed above shall be only for that portion of the trail located within the particular county that is the holder of the bond or beneficiary of the escrow. A responsible party may submit a single bond or escrow account with multiple counties respectively as co-obligees or co-beneficiaries, but in that event the annual costs used in computation of the bond amount shall be for the entire trail length.

(c) If the responsible party is not a governmental entity, the responsible party shall file with the county clerk of each county where a portion of the recreational trail is or will be located, proof of liability insurance in an amount agreed upon between the responsible party and the county commission as sufficient. Such proof shall be filed at the time of transfer of the deed to the responsible party and annually thereafter.

(d) The provisions of this section shall apply to all recreational trails, regardless of when approval to enter into negotiations for interim trail use is or was received from the appropriate federal agency.

(e) The provisions of this section may be modified or supplemented by any city governing body for recreational trails within the corporate limits of such city in the manner provided by K.S.A. 12-137 et *seq.* and amendments thereto. If a city governing body adopts requirements in addition to those provided by this section, the city shall pay all costs of compliance with such additional requirements.

History: L. 1996, ch. 223, § 2; July 1

58-3213

Chapter 58. - PERSONAL AND REAL PROPERTY

PART 6. - MISCELLANEOUS PROVISIONS

Article 32. - LAND AND WATER RECREATIONAL AREAS

58-3213. Procedures for development.

(a) Upon receipt of permission from the appropriate federal agency to enter into negotiations for interim trail use, the responsible party shall give written notice to each adjacent property owner that the responsible party intends to build a recreational trail adjacent to the property owner's property. The responsible party may utilize the addresses to which real estate tax statements are sent, as maintained by county officials, for such notices. Such notice shall be given by first-class mail unless the notice is returned undelivered, in which case a further notice shall be given by certified mail. Further notice shall be published once each week for three consecutive weeks in the official newspaper of the county in which such trail is proposed to be located.

(b) Before commencing development or operation of a recreational trail, the responsible party shall:

(1) Prepare a project plan that includes: (A) The name and address of the responsible party, (B) an itemized estimate of the costs of the project and sources of funding for the project, and (C) maps of the recreational trail;

(2) Submit by certified mail, not later than 180 days after receiving approval of interim trail use from the appropriate federal agency, the initial project plan to the county commission of each county where a portion of the trail is to be located outside of city limits and to the governing body of each city where a portion of the trail is to be located inside the city limits;

(3) Submit the final project plan to the county commission of each county where a portion of the trail is to be located outside of city limits and make subsequent reports to such county commission as to the status of trail development or operation, or both, at intervals determined by the commission and consider all recommendations the commission has regarding the trail; and

(4) Submit the final project plan to the governing body of each city where a portion of the trail is to be located inside the city limits and make subsequent reports to such city governing body as to the status of trail development or operation, or both, at intervals determined by the governing body and consider all recommendations the governing body has regarding the trail.

(c) The responsible party shall complete development of a recreational trail within a period of time equal to two years times the number of counties in which the recreational trail is located. Such period of time shall begin only when the appeal period pursuant to subsection (d) of 16 U.S.C. 1247 (1983) has expired. Any time during which there is pending any court action challenging the development or use of the trail shall not be computed as part of the time limitation imposed by this subsection.

(d) The provisions of this section shall apply to only recreational trails for which approval to enter into negotiations for interim trail use is received from the appropriate federal agency on or after the effective date of this act.

History: L. 1996, ch. 223, § 3; L. 1996, ch. 252, § 1; July 1.

58-3214

Chapter **58. -** PERSONAL AND REAL PROPERTY

PART **6. -** MISCELLANEOUS PROVISIONS

Article **32. -** LAND AND WATER RECREATIONAL AREAS

58-3214. Adjacent property owner's duty of care. An adjacent property owner has no duty of care to any person using a recreational trail except that this section shall not relieve an adjacent property owner from liability for injury to another that is a direct result of such property owner's gross negligence or willful or wanton misconduct.

History: L. 1996, ch. 223, § 4; July 1.

58-3215

Chapter **58. -** PERSONAL AND REAL PROPERTY

PART **6. -** MISCELLANEOUS PROVISIONS

Article **32. -** LAND AND WATER RECREATIONAL AREAS

58-3215. Remedies for violations. A city or county may institute procedures for recourse against the responsible party pursuant to 16 U.S.C. 1247 (1983) and 49 C.F.R. 1152.29 (1986) upon the failure of the responsible party to comply with the provisions of this act.

History: L. 1996, ch. 223, § 5; July 1.

58-3216

Chapter **58. -** PERSONAL AND REAL PROPERTY

PART **6. -** MISCELLANEOUS PROVISIONS

Article **32. -** LAND AND WATER RECREATIONAL AREAS

58-3216. Severability. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provisions or application. To this end the provisions of this act are severable.

History: L. 1996, ch. 223, § 6; July 1

EXHIBIT A – EXAMPLE OF A REQUEST TO RAILBANK

The following letter requests both a public use condition and railbanking. Complete the items in italics, as well as fill in the blanks.

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW, Room 711
Washington, DC 20423

Re: [Name of Railroad Company]-Abandonment-[Name of County and State] AB-xx (Sub-no. ***yy***)[STB Docket Number]

Dear Mr. Williams:

This comment should be treated as a protest or a petition for reconsideration in the above-captioned proceeding. This comment is filed on behalf of [Agency Name] which is a [political subdivision or government agency interested in transportation and/or natural resources, private public interest organization interested in conservation and/or recreation, etc.], which is hereinafter referred to as "Commenter".

While not taking a position on the merits of this abandonment, Commenter requests issuance of a Public Use Condition as well as a Certificate or Notice of Interim Trail Use rather than an outright abandonment authorization between [endpoint a] and [endpoint b].

A. Public Use Condition

Commenter requests the Board to find that this property is suitable for other public use, specifically trail use, and to place the following conditions on the abandonment:

1. An order prohibiting the carrier from disposing of the corridor, other than the tracks, ties and signal equipment, except of public use on reasonable terms. The justification for this condition is that [example: the rail corridor in question is along a scenic river and will connect a public park to a major residential area. The corridor would make an excellent recreational trail and conversion of the property to trail use is in accordance with local plans. In addition, the corridor provides important wildlife habitat and greenspace and its preservation as a recreational trail is consistent with that end.] The time period sought is 180 days from the effective date of the abandonment authorization. Commenter needs this much time because [example: we have not had an opportunity to assemble or to review title information, complete a trail plan or commence negotiations with the carrier.]

2. An order barring removal or destruction of potential trail-related structures such as bridges, trestles, culverts and tunnels. The justification for this condition is that these structures have considerable value for recreational trail purposes. The time period requested is 180 days from the effective date of the abandonment authorization for the same reason as indicated above.

B. Interim Trail Use

The railroad right-of-way in this proceeding is suitable for railbanking. In addition to the public use conditions sought above, Commenter also makes the following request:

STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY

In order to establish interim trail use and rail banking under section 8(d) of the National Trails System Act, 16 U.S.C. §1247(d), and 49 C.F.R. §1152.29, [Agency Name] is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by [Name of Railroad Company] and operated by [Name of Railroad Company].

The property, known as the _____ extends from railroad milepost near ***[endpoint a]*** to railroad milepost near ***[endpoint b]*** a distance of miles in ***[County Name(s)]***, ***[State].*** The right-of-way is part of a line of railroad proposed for abandonment in STB Docket No. AB-xx (Sub-no. ***yy).***

A map depicting the right-of-way is attached.

[Agency Name] acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

By my signature below, I certify service upon ***[Railroad Company and address],*** by ***U.S.*** Mail, postage prepaid, first class, this day of 20—.

Respectfully submitted,

Name:
on behalf of:

EXHIBIT B – SAMPLE STB PROCEEDINGS

As an example of a Surface Transportation Board abandonment proceedings and decisions, the following discusses topics such as the application and rejection of an Offer of Financial Assistance, the filing of a Notice of Interim Trail Use and the manner in which the Board operates:

SERVICE DATE - LATE RELEASE AUGUST 5,1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 380X)[1]

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

--ABANDONMENT EXEMPTION--IN KING COUNTY, WA

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: August 4, 1998

This decision rejects an offer of financial assistance (OFA) filed by Redmond-lssaquah Railroad Preservation Association (RIRPA) and defers action on trail use requests filed by King County, WA, and The Land Conservancy of Seattle and King County (TLC).

BACKGROUND

This proceeding concerns the disposition of a line of railroad (the Lake Sammamish line or the line) extending between milepost 7.3, near Redmond, and milepost 19.75, at Issaquah, a distance of 12.45 miles in King County. The line runs along Lake Samrnarnish, several miles to the east of Seattle, WA. No scheduled train operations have been conducted on the line since BNSF embargoed it for safety reasons on August 8, 1996.

On April 15, 1997, TLC, a noncarrier, filed a notice of exemption under 49 CFR 1150.31 to acquire and operate the Redrnond-lssaquah line. The exemption became effective on April 22, 1997, and BNSF and TLC consummated the transaction on that date.[2] Then, on June 11, 1997, less than 3 months later, TLC filed a petition for exemption to abandon the line. TLC's petition included a request for exemption from the provisions of 49 U.S.C. 10904, which provide any financially responsible person the opportunity to buy or subsidize a line authorized for abandonment at a price set by the Board. The petition also included a request for the issuance of a notice of interim trail use or abandonment (NITU) under 16 U.S.C. 1247(d).

In a decision served September 26, 1997,[3] we concluded that TLC never had any intention of reinstituting rail service on the line, and that, instead, TLC had put into effect a plan to convert the line to trail use as soon as possible after acquisition of the line. We also concluded that TLC's actions constituted a misuse of our procedures, which envision that a party that acquires a nonabandoned rail line under 49 U.S.C. 10904 does so to continue to provide rail service.

To protect the integrity of our processes, we revoked our authority for the acquisition and ordered TLC to reconvey the Redmond-lssaquah line to BNSF.[4] We noted that BNSF itself might pursue abandonment, and

that interested persons, such as King County, might seek trail use/railbanking conditions or make an offer of financial assistance to provide for continued operations at that point.

In a separate decision served September 29, 1997, the Board dismissed TLC's petition to abandon the line. By petitions filed October 7 and 17, 1997, respectively, TLC and BNSF sought reconsideration of the decision revoking the acquisition. On October 9, 1997, TLC petitioned for reinstatement of its abandonment proceeding. As pertinent, in the acquisition exemption proceeding, RIRPA intervened and replied to the petitions. The National Association of Reversionary Property Owners (NARPO) also replied to the petitions.

In a decision served May 13, 1998, we concluded that TLC and BNSF had failed to establish any basis for reconsideration of the prior decision revoking the acquisition exemption, and thus we denied their petitions seeking such relief.(5) We also found that title to the line had never appropriately passed to TLC, but we continued to hold in abeyance the requirement that TLC reconvey the line to BNSF. We noted that the record showed that no traffic had moved over the line for nearly 2 years, that there was little, if any, demand for future service over the line, that BNSF wanted to dispose of the line, which required substantial rehabilitation, and that King County wanted to acquire it for trail use. In view of these facts, we determined that the best way to accommodate the public interest was to reinstate the abandonment proceeding initiated by TLC, substitute BNSF for TLC (because title had never properly passed), and determine whether the criteria for an abandonment exemption had been met.(6) We found that the criteria had been met and granted BNSF an exemption to abandon the Redmond-Issaquah line, subject to labor protection and environmental conditions. We directed BNSF to advise us by May 26, 1998, whether the railroad was going to exercise its abandonment authority.

In the May 1998 decision, we noted (at pp. 13-14) that, if BNSF decided to exercise the abandonment exemption authority, any person desiring rail service to be continued would have the opportunity to file an OFA. We advised, however, that the facts that caused us to find in the acquisition proceeding that TLC never had any intention of providing rail service on the line made it highly unlikely that any future acquisition proceeding involving the line, whether under 49 U.S.C. 10902 (acquisition by Class II and Class III rail carrier) or 49 U.S.C. 10904 (offers of financial assistance), would survive review by us.

We emphasized that the OFA process envisions that a party that acquires a rail line under section 10904 will continue to provide rail service. Where that is not the case, we noted, we will not allow our jurisdiction to shield a railroad, or any other party seeking relief before us, from the legitimate processes of Federal, state, or local law.(7) Given our concern about the potential for further misuse or abuse of our processes in this matter, at p. 14 of our decision we indicated our intentions regarding any OFAs that might be filed:

Given the circumstances surrounding this case, we advise the public and all the parties that have participated in these proceedings that we intend to carefully review the substance as well as the form of any OFA that should be filed involving this line. Specifically, because the information now before us shows that this line is not currently being used for rail service and that there is no apparent demand for rail service, any entity filing an OFA should be prepared to submit not only evidence of its financial responsibility, but also evidence of a public need for continued rail service. Similarly, anyone challenging an OFA should be prepared to address why the OFA is not bona fide. We will not tolerate abuse of the OFA procedures by either proponents or opponents of an OFA.

On May 26, 1998, BNSF filed a letter stating that it had not yet determined whether it will abandon the Redmond-Issaquah line. BNSF also stated, however, that it intends to take whatever steps are necessary to be relieved of its common carrier status with respect to the subject line.

On June 2, 1998, RIRPA filed an OFA to acquire the line.(8) On June 5, 1998, BNSF filed a petition to reject the OFA.(9) Also on June 5, Darigold, Inc., the sole shipper to use the line in recent years,(10) filed a letter supporting railbanking of the line and dismissal of the OFA. On June 8, 1998, TLC filed a motion to dismiss the OFA. Also on that date, King County filed objections to an OFA proceeding, renewed its request for issuance of a NITU, and reaffirmed its "statement of willingness" with respect to the subject line.(11) Also filing a statement of willingness in this proceeding was TLC itself, on June 1, 1998.

In its OFA, RIRPA offered to buy the line for $997,260. The offeror provided evidence to demonstrate that it had assets of $1.9 million, enough, RIRPA maintained, to finance the acquisition plus start-up costs of $52,477 and $77,110 needed to bring the line up to Federal Railroad Administration (FRA) "excepted" track standards.(12) Noting that BNSF had estimated the line to be worth $16,197,000, RIRPA offered an explanation

of the discrepancy between the railroad's valuation and RIRPA's offer by stating that BNSF possessed only an easement interest for 23 of the 30 parcels comprising the line. RIRPA supported its valuation by verified statements of individuals allegedly qualified to assess rail real estate and to value scrap track material.

DISCUSSION AND CONCLUSIONS

Generally where an OFA is filed, the Director of the Office of Proceedings, exercising delegated authority, would determine if the offeror possessed the wherewithal to make good on the offer, and, in so doing, consider whether the offeror had explained any discrepancy between the offer and the carrier's estimate of the value of the line. But as we specifically explained in our May 1998 decision, it is appropriate for us to require, and carefully review before instituting an OFA proceeding, evidence of a public need for continued rail services, given the unusual circumstances surrounding this case (i.e., a record showing that (1) BNSF embargoed the line for safety reasons in August 1996, (2) no traffic has moved on it since that time, (3) the cost of restoring the line would be substantial, and (4) we had no information to suggest that prospects for anything more than de minimis traffic on the line now or in the future exists--certainly not enough to cover rehabilitation, maintenance and operating costs).

In implementing section 10904 of the ICC Termination Act, formerly section 10905 of the Interstate Commerce Act, we must be mindful that Congress enacted the OFA provisions to provide for continued rail service. The "aim of [former section 109051 is not simply the maintenance of rail lines but the continuation of rail service." Conrail v. ICC, 29 F.3d 706, 712 (D.C. Cir. 1994). In implementing former section 10905, our predecessor agency, the Interstate Commerce Commission, concluded that

[The statute] envisions either an uninterrupted service or a continuation of service within a reasonable period of time . . . . Those situations in which a purchaser of rail properties has no affirmative plans for continuation or resumption of service, but merely holds out the possibility of service at some unspecified future time, are not properly to be considered offers of financial assistance and do not fall within the scope of [the statute].

Abandonment of R. Lines & Discontinuance of Serv., 365 I.C.C. 249,260 (1981).

While the ICC Termination Act streamlined the language in former section 10905, now section 10904, language remaining in the statute clearly reaffirms the fundamental purpose of section 10904 to continue rail service. For example, section 10904(b)(1) refers to "an estimate of the annual subsidy and minimum purchase price required to keep the line or a portion of the line in operation." Section 10904(b)(3) requires a rail carrier to provide certain data "which would be required to continue rail transportation over that part of the railroad line." Section 10904(f)(1)(B) provides for the Board to set terms and conditions at not less than fair market value for the line, "including . . . all facilities on the line or portion necessary to provide effective transportation services." Section 10904(f)(4)(A) provides that no offeror may "transfer or discontinue service" for 2 years and shall not transfer the line to anyone other than the previous rail carrier for 5 years.

Accordingly, this agency's (and its predecessor's) long-standing precedent that an offer must contemplate continued rail service reflects current law as well as the prior statute. See, e.g., Owensville Term. Co.--Aband. Exemption--In Gibson and Posey Counties, OFA, Docket No. AB-477 (Sub-No. 2X) (STB served Dec. 16, 1997); Union Pac. R. Co.--Aband. Exemption--In Lancaster County, NE, In the Matter of a Request to Set Terms and Conditions, Docket No. AB-33 (Sub-No. 71X) (ICC served Sept. 28, 1992); Norfolk and Western Ry. Co.--Aband. Exemption--Between Bowyer Creek Junction and Burma, VA, Docket No. AB-290 (Sub-No. 43X) (ICC served Dec. 5, 1988); Conrail Aband. of W. 30th Street in New York, Docket No. AB-167 (Sub-No. 493N) (ICC served Jan. 13, 1987).

The first provision aimed at allowing shippers or other interested parties to preserve lines approved for abandonment by purchasing the line or subsidizing the carriers was enacted as 49 U.S.C. l a (6), (7), and (11) by sections 802 and 809(c) of the Railroad Revitalization and Regulatory Reform Act of 1976, Public Law 94-210. Sections 1a (6), (7), and (11) of the Interstate Commerce Act were recodified as section 10905 by the Revised Interstate Commerce Act, Public Law 95-473, approved Oct. 17, 1978. In reviewing these provisions as part of proposed legislation (the Railroad Transportation Policy Act of 1979, which became the Staggers Rail Act of 1980, or the Staggers Act), the Senate Commerce Committee noted,[13]

Present law (section 10905 of title 49 of the U.S. Code) sets up a procedure where rail lines approved for abandonment may be purchased or subsidized in order to continue rail service (emphasis added).

Subsequently, in the Conference Report on the Staggers Act, the Conferees noted that they had adopted the Senate bill, section 202, which was designed to

assist shippers who are sincerelv interested in improving rail service, while at the same time protecting carriers from protracted legal proceedings. . . .

H.R. Rep. No. 1430, 96th Cong., 2d Sess. 125 (1980) (emphasis added). In short, the legislative history of the Staggers Act makes clear that the financial assistance provisions were to be invoked only when those offering financial assistance did so because they were "sincerely interested in improving rail service". See Havfield Northern R. v. Chicaao & N.W. Transp., 467 U.S. 622, 630 & n.8 (1984).

Here, after considering all the evidence presented by RIRPA and the other parties, we conclude that the record does not permit us to conclude that the offer is motivated by a desire to provide continued rail service. Nor can we find that continued rail service is likely to result from the offer. That being the case, it would be an abuse of our processes to permit the section 10904 process to go forward.[14] Accordingly, RIRPA's OFA will be rejected.

RlRPA is an association of individuals, most of whom live along the shore of Lake Sammamish adjacent to the railroad right of way. In motions asking us to dismiss the OFA, TLC, King County, and the BNSF (herein collectively, the opponents) say that RIRPA's only interest is to frustrate the development of a trail on the right of way and to thereby preserve the privacy of RlRPA members. The opponents offer correspondence by RlRPA about the project to substantiate this claim.[15]

This evidence is relevant but is not, by itself, dispositive. Nothing prohibits landowners adjacent to a right of way from filing an OFA. That their primary motivation might be to defeat interim trail use would by itself not condemn an offer, as long as they were intending to provide rail service and there existed a real need for that service. Indeed, correspondence prepared at a time when this line was still in service envisioned continuing service to the last remaining shipper on the line.[16]

But that shipper, Darigold, stopped using the line for shipping butter following the BNSF embargo for safety reasons and has made clear that it does not oppose abandonment and has no desire to use this line for rail service again.[17] In response to the request in our May 1998 decision that any offeror submit evidence of a public need for rail service in its OFA, RlRPA submitted verified statements from four shippers. However, RIRPA's statements provide no basis for us to conclude that future traffic on the line is other than highly speculative.

None of the companies that submitted verified statements has ever shipped or received traffic over this line. Indeed, it does not appear that any has ever used rail service at all. Two of the companies ship manufactured goods--boats, wood stoves, saunas, and hot tubs--that rarely move by rail. Both use truck exclusively and make no commitment to use the line. The perfunctory support statements from these companies indicate only that they would consider using rail service if rates were reasonable and competitive with alternative modes of transportation. Neither company has any agreement with RIRPA on what such a rate might be. As neither has a rail siding, each would need to have any rail shipment transloaded onto truck, a costly, time consuming process which poses the threat of damage, especially with a commodity such as boats.

A third statement of support was submitted by Schrod-Mar, Inc. (SMI), which supplies sand and gravel to asphalt and concrete production facilities at Redmond, WA. SMI says it would be interested in shipping gravel from Palmer, WA, to a siding on the line for transloading onto truck for delivery to SMI's facilities. SMI currently uses truck but expresses concern about traffic congestion and possible weight limits on a part its routing, which would necessitate circuitous movements. SMI states that it has requested RlRPA to advise it of "when and under what terms SMI can begin to use RIRPA's rail service." Apparently neither has made any commitment to the other.

SMI's statement does not show a public need for continued rail service on this line. As BNSF points out in its comments, SMI does not say it is served by rail at origin, and it does not appear to be. Thus, gravel would have to be trucked from origin to the railhead, loaded into freight cars, transported to the Lake Sammamish line, transloaded onto trucks, and hauled to the destination. The shipment would have to move over two carriers, BNSF and RIRPA. The entire haul is only slightly in excess of 100 miles, a very short haul for a truck-rail-truck move involving two rail carriers. SMI has no transloading facility at origin and apparently would have to build one, which would require a significant investment. BNSF would charge the rate at origin, and there is

no indication that that carrier could or would quote a rate that would compete with existing trucking service. SMI has made no commitment to volumes and has not sought a rate quote from either BNSF or RIRPA.

The fourth statement is from Lakeside Industries (Lakeside), which ships rock. Lakeside operates a gravel pit and rock crushing facility on the Lake Sammamish line at Issaquah, and it states that the reserves of rock there have been almost depleted. Lakeside states that it needs rail service to bring rock from Centralia, WA, 90 miles away, to Issaquah, so that Lakeside could crush the rock there and ship it to Lakeside customers. Lakeside does not explain why it must employ this seemingly circuitous procedure rather than crushing rock at origin in Centralia the way it does now at Issaquah.

The movement from Centralia would originate on a short line, the Puget Sound and Pacific Railroad, then move over BNSF and RIRPA, a three-line haul. This would seem to be an inefficient and expensive movement requiring extensive switching on a very short line haul. The entire movement here is only slightly more than 200 miles.

Lakeside sought a rate quote from BNSF. That carrier quoted a rate of $1,361 per car, which Lakeside has rejected as unreasonably high. That being the case, Lakeside does not appear to offer any potential as a source of business of the RIRPA. Lakeside speaks of challenging the BNSF rate if RIRPA acquires the line. But inasmuch as Lakeside has shipped by truck over this route for years, it would be extremely unlikely that the Board would have jurisdiction over the reasonableness of such a rate.[18]

The record here and in the earlier proceedings before us involving this line contain ample evidence that the Lake Sammamish line would require extensive rehabilitation in order to make the line operable. TLC claims that the cost of rehabilitating the line to carry traffic at 10 miles per hour under FRA Class 1 standards will amount to almost $1,000,000, and it has submitted a detailed analysis to support its argument.[19] TLC has claimed in its abandonment petition that it would cost in excess of $650,000 to rehabilitate the line and, in light of the recent washout of a bridge, TLC states that it would now cost $971,000 to bring the line up to either FRA Class I standards or to FRA "excepted" standards.

RIRPA claims that it would only cost $77,110[20] to rehabilitate the line to FRA "excepted" track standards, and submits a verified statement in support of the claim. However, the one-page statement is not a contract to perform the work for the amount stated and is not supported by any real analysis.

This track has been in excepted status--less than FRA Class 1 status--for more than 4 years. The track was embargoed for safety reasons in August 1996 and no traffic has moved over it since that time. The inspection conducted for TLC by R.L. Banks identifies significant deficiencies in the track, which is hardly surprising in view of the history of the line in recent years. Thus, even if the appraisal conducted by TLC may be somewhat high, the record leaves no doubt that substantial rehabilitation would have to be undertaken to again make the line operable.

The record indicates that no traffic has moved over the line in almost 2 years, that any prospect for future traffic is highly speculative, and that the cost to rehabilitate the line is substantial. In short, given all the circumstances, it is not reasonable to believe that the offeror would make the substantial investments required to rehabilitate the track (including the replacement of a bridge) in order to pursue rail traffic that ceased long ago and that, based on the shipper statements submitted by RIRPA itself, does not show any real likelihood of returning. This is particulary true where, as here, the offeror is not an entrepreneur with a track record of running short lines and a sound business plan to attract new shippers, but rather is an association consisting mostly of landowners who live along the line. RIRPA's expression of willingness to haul traffic that seems unlikely to materialize does not provide a sufficient basis for invoking section 10904.

In support of its OFA, RIRPA relies on an ICC decision allowing an offeror, over the objections of the abandoning railroad, to subsidize a rail line that had been out of service. Illinois Central Railroad Company--Abandonment Exemption--In Perry County, IL, Docket No. AB-43 (Sub No. 164X) (ICC served Nov. 8, 1994 and Jan. 12, 1995) (Perry County). RIRPA specifically cites language in the November 8 decision in Perry County, stating, at 3,

The Commission has never required there to be recent actual service for transportation availability to be continued through an OFA. Rather, it has viewed its task under 49 U.S.C. 10905 [now 109041 as preserving the potential for transportation.

RIRPA's reliance on Perry County is misplaced. There, the owner of an inactive coal mine was willing to make payments to the railroad to preserve a line from which the mine owner received no immediate benefit whatever. The offeror's willingness to do so manifested a strong intent to use the line for rail service in the future if the mine were again to become active. No other reason existed for the mine's owner to make the payments. Here, there is no evidence to suggest that RIRPA has a similar interest in acquiring the line to preserve the line for future rail service. The issue is not whether service is currently being provided, but whether the circumstances in their entirety indicate that the financial assistance is being offered for rail service. The evidence in Perry County indicated that the answer was yes. The evidence here indicates that the answer is no.

Given all of these circumstances, we cannot conclude that the offer of financial assistance filed by RIRPA is for continued rail service. That being the case, we will not institute a proceeding under section 10904, and, accordingly, we need not determine whether RIRPA is a financially responsible person.

King County and TLC have requested that interim trail use/railbanking be imposed under 16 U.S.C. 1247(d). They have also submitted statements of willingness to assume financial responsibility for the right-of-way and acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service, as required under 49 CFR 1152.29. The requests comply with the requirements for interim trail use/railbanking.

As noted, however, BNSF has not notified the Board whether it is going to exercise its abandonment exemption authority. Therefore, we will defer action on the trail use requests of King County and TLC pending BNSF's notifying us whether it is going to exercise its abandonment exemption authority and, if so, whether it is willing to negotiate for trails use.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The offer of financial assistance submitted by RIRPA is rejected.

2. Action on the trail use requests of King County and TLC is deferred.

3. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams

Secretary

1. This proceeding previously was handled on a consolidated record with The Land Conservancy of Seattle and Kina County--Acquisition and Operation Exemption--The Burlinaton Northern and Santa Fe Railway Company, STB Finance Docket No. 33389 (TLC Acquisition), and The Land Conservancy of Seattle and King County--Abandonment Exemption--In Kina County, WA, STB Docket No. AB-508X (TLC Abandonment).

2. The notice of exemption was published on April 29, 1997 (62 FR 23291) and served on April 30, 1997.

3. The decision was issued in TLC Acquisition and was prompted by a petition to revoke filed by the United Transportation Union, which withdrew its opposition after the decision was issued.

4. In a subsequent decision served October 22, 1997, the Chairman ordered the reconveyance requirement held in abeyance pending resolution of petitions to reconsider the September 26 decision.

5. Petitions for review of the May 13, 1998 decision, are pending in The Land Conservancy of Seattle and King County v. STB, No. 98-70776 (9th Cir. filed July 10, 1998) and in Burlinaton Northern v. STB, No. 98-60432 (5th Cir. filed July 10, 1998).

6. We also gave the BNSF proceeding the new docket number and title shown in the heading of this decision

7. See Modern Handcraft. Inc.--Aban., 363 I.C.C. 969 (1981); Kansas Citv Pub. Ser. Frat. Operation--Exempt.--Aban., 7 I.C.C.2d 216, 224-226 (1990); and Chelsea Property Owners--Aban.--The Consol. R. Corp., 8 I.C.C.2d 773,778 (1992), aff'd sub nom. Consolidated Rail Corp. v. ICC, 29 F.3d 706 (D.C. Cir. 1994); and Norfolk and W. Ry.--Aband. Exemption--In Cincinnati, Hamilton County, OH, STB Docket No. AB-290 (Sub-No. 184X) (STB served May 13,1998).

8. On June 12, 1998, RIRPA filed an objection to interrogatories propounded by BNSF and received by RIRPA on May 27, 1998. On June 24, 1998, RIRPA asked that the Board grant an exemption from 49 U.S.C. 10904(e) to provide for at least 25 days after any alternative Board finding under 49 U.S.C. 10904(d)(2) for RIRPA to request the Board to set terms and conditions for financial assistance, rather than 30 days after the OFA was made as required under section 10904(e). On July 2, 1998, RIRPA asked the Board to set terms and conditions for financial assistance. BNSF and TLC replied to RIRPA's request. Subsequently, several additional pleadings relating to the request and replies were filed. In light of our action here, we need not act on these pleadings.

9. On June 26, 1998, BNSF filed a motion to compel RIRPA to respond expeditiously to certain specified interrogatories so that the railroad may respond fully to the Board's May 13 directive that any opponents of an OFA "be prepared to address why the OFA is not bona fide". In view of our rejection of the OFA here, we need not act on this motion.

10. Another entity received 7 carloads in 1994 and 1995 but none in 1996.

11. King County's pleading was submitted by the County's Department of Parks and Recreation. For simplicity, we will continue to refer to the entity as "King County."

12. The FRA has adopted standards governing track safety. See 49 CFR Part 213. Class 1 standards require that track be maintained at levels that permit operating speeds of up to 10 m.p.h.; Class 2 standards require maintenance that will permit 25 m.p.h. speeds; and so on. In certain limited circumstances where their track quality will not even permit maximum train speeds of 10 m.p.h., track owners may seek to be "excepted" from class 1 standards. FRA is currently considering changes to its regulations concerning "excepted" track.

13. Hearings before the Committee on Commerce, Science and Transportation, United States Senate, 96th Congress, First Session in S.1946, "To Reform the Economic Regulation of Railroads, And For Other Purposes", at 47.

14. BNSF has declined to indicate whether it will exercise the abandonment authority granted. If BNSF declines to consummate the abandonment authority, the OFA would be moot. But we will issue a decision on this OFA here to resolve the unique issues which it raises.

15. See TLC Motion to Dismiss, Appendices I, J, K, and L; King County Objections, Enclosure C; and BNSF's Petition to Reject, Exhibit A.

16. TLC Motion to Dismiss, Exhibit I, August 26, 1996 letter of the East Sammamish Property Owners Association, p. 3: "After acquisition we would then contract out with a company that specializes in running short line railroads. As long as Darigold still ships butter, we should be able to break even running the line and recoup our money when and if we later abandon the line when Darigold stops shipping."

17. Letter from Douglass C. Marshall, Vice President Public Affairs, Darigold, June 4, 1998.

18. The Board has jurisdiction over rate complaints only if the complainant demonstrates that the carrier is "market dominant," 49 U.S.C. 10707, a showing that cannot be made if the rail carrier faces effective intermodal competition, i.e., competition from trucks. Here, of course, Lakeside uses truck extensively and exclusively, and there is nothing in the record to suggest that it could not continue to do so.

19. BNSF also indicates that the cost of restoring the line is substantial and unjustifiable.

20. The estimate notes that it does not include the construction of track that would be needed to interchange cars. This construction would cost $39,477, according to RIRPA's witness. The witness states that the construction would not be necessary if the BNSF made its facilities available for that purpose. But apparently, BNSF has not agreed to such an arrangement.

SERVICE DATE - SEPTEMBER 18,1998

DO

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-6 (Sub-No. 380X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

--ABANDONMENT EXEMPTION--IN KING COUNTY, WA

Decided: September 16, 1998

In a decision served May 13, 1998, the Board granted The Burlington Northern and Santa Fe Railway Company (BNSF) an exemption to abandon a 12.45-mile line of railroad between milepost 7.3, near Redmond, and milepost 19.75, at Issaquah, in King County, WA (the Redmond-lssaquah Line), subject to labor protective and environmental conditions. Thereafter, in a decision served August 5, 1998, the Board rejected an offer of financial assistance filed by Redmond-lssaquah Railroad Preservation Association under 49 U.S.C. 10904 to continue service on the line.(1)

Also in the August 5 decision, the Board deferred action on requests by King County and The Land Conservancy of Seattle and King County (TLC) that the Board impose interim trail use/rail banking under 16 U.S.C. 1247(d). The Board noted that King County and TLC had submitted statements of willingness to assume financial responsibility for the right-of-way and acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service, as required under 49 CFR 1152.29. The Board also found that the requests complied with the requirements for interim trail use/rail banking. However, the Board deferred action on the requests pending BNSF's notifying the Board as to whether the railroad was going to exercise its abandonment exemption authority and, if so, whether it was willing to negotiate for trail use.

By letter filed August 10, 1998, BNSF has notified the Board that it intends to act on its abandonment exemption authority. BNSF also joins in the requests that a notice of interim trail use (NITU) be issued in this proceeding.

The requests by King County and TLC comply with the requirements of section 1152.29, and BNSF is willing to negotiate for trail use. Therefore, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If BNSF reaches a mutually acceptable final agreement or agreements with King County and/or TLC, no further Board action is necessary. If no agreement is reached within 180 days, BNSF may fully abandon the line. See 49 CFR 1152.29(d)(2). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.

2. Upon reconsideration, the decision served August 5, 1998, exempting BNSF's abandonment of the Redmond-lssaquah Line, is modified to the extent necessary to implement interim trail use/rail banking as set forth below for a period of 180 days from the service date of this decision and notice.

3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations of the right-of-way.

5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, BNSF may fully abandon the line, provided that the labor protective and environmental conditions imposed in the August 5 decision are met.

7. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary

1. See pages 1-5 of the decision for a more detailed discussion of the history of this and related proceedings.

SERVICE DATE - APRIL 5,2000

DO

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-6 (Sub-No. 380X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

--ABANDONMENT EXEMPTION--IN KING COUNTY. WA

Decided: March 31, 2000

In a decision served May 13, 1998,[1] the Board granted The Burlington Northern and Santa Fe Railway Company (BNSF) an exemption to abandon a 12.45-mile line of railroad between milepost 7.3, near Redmond, and milepost 19.75, at Issaquah, in King County, WA (the Redmond-lssaquah Line), subject to labor protective and environmental conditions.

On September 18, 1998, a decision and notice of interim trail use or abandonment (NITU) was served authorizing a 180-day period for The Land Conservancy of Seattle and King County (TLC) and King County (King County) to negotiate an agreement with BNSF to assume financial responsibility for and become interim trail manager for the right-of-way.[2]

On March 9, 2000, the City of Issaquah, WA (City) and TLC jointly filed a letter requesting the Board to vacate the existing NITU and issue an appropriate replacement NITU substituting the City in lieu of TLC as the interim trail manager for the southerly 1.55 miles of rail corridor between milepost 18.2 and milepost 19.75 (the lssaquah segment), pursuant to 49 CFR 1152.29(f).[3]

Petitioners have submitted a copy of the extant NITU and a statement of willingness to assume financial responsibility by the new trail manager. The parties have also requested that responsibility for the lssaquah segment be transferred to the City effective no later than April 7, 2000.[4] By letter filed March 24, 2000, BNSF states that it does not object to substitution of the City as trail manager for the portion of the rail corridor between milepost 18.2 and milepost 19.75.

Petitioners' submission is in compliance with the requirements of section 1152.29(f). Therefore, this proceeding will be reopened and the requested relief will be granted.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.

2. The decision and notice of interim trail use or abandonment (NITU) served September 18, 1998, is vacated.

3. A replacement NITU designating the City as the new trail manager for the lssaquah segment (and with King County continuing as the trail manger for the Redmond segment) is issued, effective on the service date of this decision.

4. The new trail user is required to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and the payment of any and all taxes that may be levied or assessed against the right-of-way.

5. Interim trail use/rail banking is subject to the future restoration of rail service and to the new user continuing to meet the financial obligations for the right-of-way.

6. If the new trail user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that trail use be vacated on a specified date.

7. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary

1. The proceeding was handled on a consolidated record with The Land Conservancy of Seattle and King County--Acquisition and Operation Exemption--The Burlinaton Northern and Santa Fe Railwav Company, STB Finance Docket No. 33389; and The Land Conservancv of Seattle and King Countv--Abandonment Exemption--In Kina Countv. WA, STB Docket No. AB-508X.

2. According to petitioners' representative, TLC and King County reached agreements rail banking the rail corridor as follows: (1) from milepost 7.3 to approximately milepost 18.2, King County is the interim trail manager; and (2) from milepost 18.2 to the end of the line at milepost 19.75, TLC is the interim trail manager.

3. King County will remain the interim trail manager for the northerly Redmond segment.

4. Petitioners state that they have agreed that TLC will continue to act as the interim trail manager until such time as the City replaces TLC.

REFERENCES

Miner, Craig H. 1972, The St. Louis-San Francisco Transcontinental Railroad. The Thirtv-fifth Parallel Proiect, 1853-1890. The University Press of Kansas, Lawrence (Doctoral dissertation).

The Guide for Development of Bicycle Facilities, American Association of State Highway and Transportation Officials (AASHTO). 1999.

Comprehensive Bicycle Plan for the Wichita Metropolitan Area. The Wichita-Sedgwick County Metropolitan Area Planning Department. April 1989.

Parks and Pathways: Park and Open Space Master Plan. The Wichita-Sedgwick County Metropolitan Area Planning Department and the Wichita Park and Recreation Department. September 1996.

Flink, Charles A., Olka, Kristine, and Searns, Robert M. 2001. *Trails for the Twenty-First Century: Planning Design, and Management Manual for Multi-use Trails.* (Island Press, Washington D.C.).

Wichita/Sedgwick County Railroad Alternative Analysis, Final Report. HNTB Corporation. October 1997.

Railbanking vs. acquisition vs. passenger rail line – January 18,2002

There may be some aspects that I didn't think of, please review.

Railbanking	
Pros	**Cons**
Avoids the acquisition process	Does not avoid the compensation issue
Provides city with preference to preserve the corridor, given that no offer of financial assistance occurs.	Does not protect installations other than railroad purposes from compensation and new easements
Railroads are anxious to railbank, making for an easier, structured process.	Limits uses that the corridor may be used for
	Requires maintenance of corridor, including fencing, and assumption of liability
	May be reopened for railroad use, by anyone able to put a rail line together.
	The railbanking process is a political hot potato
Acquisition of the corridor	
Pros	**Cons**
No limitations on use, other than usual statutory municipal limitations. Could be park, utility corridor, trail, open space, drainage and runoff control, a transportation corridor in the future for rail, trolley, or new transport modes…	Requires either a new easement or condemnation
Acquisition may be less costly than compensation penalties for takings, uncertain though.	Requires maintenance and assumption of liability
Obtaining the land ownership or easements do not require railroad abandonment or participation.	Full use of the corridor is dependent on actual abandonment of the line, although some property use could occur if rights were obtained.
May provide future opportunities for transportation or transit oriented development or redevelopment.	Railroad will not be able to take credits, making acquisition a less attractive option to them and an alternative railbanking or OFA candidate as another option.
Removes much of the property rights argument that occurs in railbanking.	Railroad may want compensation for leaving rail related structures and materials
Acquisition provides some immediate economic benefit to the adjacent properties.	
Utility leases may generate revenues, and reduce expansion costs	

Operating a Passenger Rail service	
Pros	**Cons**
Rail corridor remains in service	City (as railroad operator) becomes a common carrier unless certain conditions are met
City could contract with a rail company. That contractor would be the common carrier.	Rail line operator would need to conform to railroad and safety laws and policies, and submit to regulation through Federal agencies such the Federal Railway Administration
STB reports that if there were no restrictions to railbank by previous railroad, City could come back and initiate rail service passenger and/or freight.	There may not be demand enough to justify the investment
Railroad could "donate" active rail line	Unlike bus routes, rail lines are not flexible for providing transit service
Active rail line would not initiate any of the compensation aspects of railbanking	Traffic delays at crossing will occur
Trains would not have to run to be "active"	Rail line equipment such as safety and crossing equipment along the line is reported to be obsolete. Tracks and ties may not be adequate.
Possibility of connecting with Butler County Port Authority rail line	Rail line easement does not protect non-railroad installation or uses.
Long term potential for transit oriented development	long term TOD potential may mean 20-50 years
Maintaining possession of tracks and ties	
Pros	**Cons**
Salvage value may exist	Rail line equipment such as safety and crossing equipment along the line is reported to be obsolete. Tracks and ties may not be adequate.
Railroad bed remaining in tact may mitigate negative drainage and environmental impacts	Railroad may want compensation at net liquidation value
Some materials and equipment may be useable. Butler County Port Authority expressed some interest in some components. May be opportunity for inter-local cooperation.	Alternative use of the corridor may be impeded by the tracks and ties

Please note that Fuel Cell, Hybrid Electric vehicles (I followed one in from Andover Thursday), and other propulsion methods are in development. These may eliminate the above ground electric wire or diesel engine options that currently exist for transit systems.

ACQUISITION OF CORRIDOR

RAILBANKING

Pros:

- Brings the City to the front of the line in acquiring the right-of-way.
- Allows for a more structured negotiation process with BNSF regarding the transfer of the line.

Cons:

- The City would remain liable for compensating adjacent landowners.
- Would expose the City to the potential loss of use of the corridor in the event the right-of-way is returned to rail service.
- Could be considered an unnecessary process.

CONDEMNATION

Pros:

- Provides the City the greatest amount of control over the Corridor.
- The City would not be burdened with the State's Recreational Trail Act, thereby allowing greater flexibility in determining when improvements within the corridor could take place.

Cons:

- Must wait to acquire the right-of-way until all other interests have been through the railbanking process and the line is fully abandoned.